

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GOLO, LLC,

Plaintiff.

v.

Goli Nutrition Inc., a Canadian Corporation,
Goli Nutrition Inc., a Delaware Corporation,
Michael Bitensky, an individual,

Defendants.

C.A. No. 20-667-RGA

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

1. Plaintiff GOLO, LLC (“**Plaintiff**” or “**GOLO**”), by its undersigned attorneys, for its First Amended Complaint against Defendants Goli Nutrition Inc., a Canadian Corporation (“**Goli Canada**”), Goli Nutrition Inc., a Delaware Corporation (“**Goli US**”), and Michael Bitensky, an individual (“**Bitensky**”) (collectively, “**Defendants**” or “**Goli**”) alleges as follows:

Nature of Action

2. GOLO is a leading health and wellness company that offers a total weight loss and wellness solution, which includes a unique and proprietary plan to help its customers make healthy lifestyle changes to allow them to lose weight and a patented dietary supplement that has been clinically shown to increase weight loss, reduce hunger and cravings and suppress the appetite, reduce stress and anxiety, increase immune function, and increase energy. Together, the GOLO plan and dietary supplement have been shown to reduce health risk factors, including by lowering blood sugar levels, blood pressure, cholesterol, triglycerides, and visceral fat, and by significantly reducing a person’s body mass index. The developers of GOLO include a team of doctors, pharmacists, and researchers who have spent more than a decade developing the

company's products, and focusing on sound research and science to develop a holistic system that addresses weight loss and overall health and wellness.

3. GOLO began selling its proprietary weight loss and wellness solution at least as early as April 2013 using its federally registered and distinctive GOLO trademark (the “**GOLO Mark**”). GOLO has invested significant resources in product development, studies, trials, research, and in TV and digital advertising to build awareness and value in its GOLO Mark and to ensure its products provide the marketed benefits. GOLO has over 1 million customers and has shipped over 2 million packages of products. Each of those packages includes several uses of the GOLO Mark. GOLO has an extremely high customer satisfaction rating and provides free support, coaching, and online tools to support its customers' transition to a healthier lifestyle.

4. GOLO operates within the growing health and wellness industry. Obesity, heart disease, diabetes, and cancer are all increasing at alarming rates, and the global COVID-19 pandemic has magnified the problem with increased weight gain, stress, anxiety, and depression. Consumers, understandably concerned about their health, are particularly vulnerable to unscrupulous companies offering products that promise easy and quick routes to weight loss, stronger immune systems, and other improved health markers. The increase in the number of companies making inflated and unsubstantiated claims about the health benefits of their products—along with the risks those claims pose to consumers—has led regulators to issue guidelines regarding the marketing of weight loss products and other dietary supplements. And for good reason: consumers purchasing products believing they will have health benefits that they do not have is a threat to public health.

5. Goli's Founder and President, Defendant Michael Bitensky, launched the company in 2019 with just one product: gummies that Goli claims provide the same health

benefits as a full “shot” of real liquid apple cider vinegar (“ACV”) in just two delicious gummies (“ACV Gummies,” or a singular “ACV Gummy”). Goli offers dietary supplements and related services under the trademarks GOLI and GOLI NUTRITION (collectively the “Goli Marks”). Goli represents that its ACV Gummies support weight loss, a healthy immune system, heart health, healthy digestion, lower blood sugar levels, reduced appetite, and improved energy.¹

6. In its widespread marketing campaign of its ACV Gummies, through both sponsored advertisements on social media and its network of thousands of paid influencers, Goli’s ACV Gummies have been portrayed as a miracle supplement that is relatively cheap, easy, tasty, and supposedly requires no additional work to achieve the long list of promised health results. For instance, many of Goli’s advertisements reflect users losing double-digit inches from their waist, multiple pants sizes, and many pounds.

7. Many of Goli’s false claims in connection with its ACV Gummies were recently challenged by another competitor in front of the National Advertising Division of the Better Business Bureau. In response to that challenge, Goli did *not offer any support* for the vast majority of the challenged claims (including those relating to weight loss), but rather, Goli agreed to discontinue them. Despite that promise, Goli has *not* stopped marketing its ACV Gummies as a “magic in a bottle” that supports weight loss and weight management and decreases appetite.

8. In January 2021, Goli launched a second dietary supplement called Ashwa (“Ashwa Gummies,” or a singular “Ashwa Gummy”), which Goli has touted as the “World’s

¹ See, e.g. <https://www.prnewswire.com/news-releases/goli-nutrition-launches-worlds-first-apple-cider-vinegar-gummy-300922883.html> (last accessed Aug. 19, 2021); <https://goli.com/pages/benefits> (last accessed Aug. 19, 2021).

Most Powerful Ashwagandha Gumm[y].”² Ashwagandha is an herbal pharmaceutical and an adaptogen—an herb you can eat as food or take via supplement that is believed to help the body deal with stress. Much of Goli’s marketing of its Ashwa Gummies, like that of its ACV Gummies, promises not just stress reduction and calming effects, but a laundry list of health benefits nearly identical to those Goli claims its ACV Gummies provide, including weight management.³

9. In May 2021, Goli launched its third dietary supplement product, Superfruits (“**Superfruits Gummies**”). As with its other two products, Goli promises a swath of health benefits, all in the form of a tasty candy-like gummy. Through its viral marketing, Goli claims that this product improves skin and immunity, provides essential nutrients to “support normal functions,” and promotes overall “wellness.”⁴

10. In September 2021, Goli began selling another new nutritional and dietary supplement product called “Supergreens Gummies” (together with the ACV Gummies, Ashwa Gummies, and Superfruits Gummies, the “**Gummies**”). Goli claims that the Supergreens Gummies pack nearly a dozen essential vitamins and minerals into two gummy bites to

² See <https://goli.com/pages/home-ashwagandha> (last accessed Aug. 19, 2021).

³ See *id.*

⁴ See <https://goli.com/pages/benefits-superfruits> (last accessed Aug. 22, 2021); https://www.instagram.com/p/CS3F6GwrDMV/?utm_source=ig_web_copy_link (“SUPERFRUITS- gummies help with wellness, beauty & nutrition.”); https://www.instagram.com/p/CRDtLDQBds5/?utm_source=ig_web_copy_link (“Find yourself radiating from the inside out with our carefully crafted formula designed with beauty and wellness in mind.”).

purportedly provide a “healthy immune system,” “overall health & wellbeing,” and other positive health benefits.⁵

11. Most recently, in November 2021, Goli widened its reach, introducing its first non-gummy dietary supplements, “Goli Bites,” in two variants: Multi Bites and Calm Bites. Through these new offerings, Goli claims that the Goli Bites, chocolate-covered, caramel-filled bites, provide wide-ranging health benefits, including “overall health & wellbeing,” “control [of] stress-related food cravings,” “support a healthy immune system,” and “reduce and maintain healthy body weight.”⁶

12. Goli has seized on consumers’ desire to find an easy route to weight management, immune system support, and overall wellness with a marketing strategy that falsely and misleadingly represents that Goli’s products provide “simple” and healthy ways to manage weight, strengthen their immune systems, and improve overall health. Goli’s website (www.goli.com), sponsored advertising on social media and in other media, and product packaging are replete with false and misleading information. For example:

- Goli overstates the amount of apple cider vinegar in its ACV Gummies, even assuming, *arguendo*, that the starchy ACV **powder** included in the ACV Gummies can credibly be called “Apple Cider Vinegar” even though their contents and associated benefits bear no resemblance to traditional liquid ACV;
- Goli claims that two of its ACV Gummies are equivalent to one shot of liquid apple cider vinegar, when in reality, one would have to eat **at least thirty ACV Gummies** to

⁵ <https://goli.com/pages/home-supergreens/> (last accessed Dec. 15, 2021) (touting “digestive health,” a “healthy immune system,” “overall health & wellbeing” and other benefits for Goli’s Supergreens product).

⁶ <https://goli.com/pages/home-bitesmulti> (last accessed Dec. 15, 2021) (claiming that Goli’s chocolate Multi Bites “Promote Overall Health & Well-being” and “Support a Healthy Immune System”); <https://goli.com/pages/home-bitescalm/> (last accessed Dec. 15, 2021) (claiming that Goli’s chocolate-covered Calm Bites “Control Stress-Related Cravings” and “Reduce and Maintain Healthy Body Weight”).

get the amount of acetic acid (the main active ingredient in apple cider vinegar) from what is commonly understood as even a small shot;

- Goli claims that its ACV Gummies contain a combination of beneficial enzymes, yeast, and healthy bacteria found in liquid apple cider vinegar called “the mother,” but laboratory testing of an actual Goli ACV Gummy confirms “the mother” is not present;⁷
- Goli touts its Ashwa Gummies as containing the highest concentration ashwagandha extract on the market and being vegan, but the highest concentration of ashwagandha extract is not vegan, so Goli’s claims cannot both be true;
- Despite claiming weight-management benefits, Goli’s Ashwa Gummies contain 50% more calories than disclosed;
- Goli represents that its Ashwa Gummies provide a host of “clinically proven” benefits, misleading consumers to believe that its products have been tested when Goli relies solely on studies about the product’s ingredients, before they are processed into a gummy form, to make its claims; and
- Goli’s product packaging and other marketing materials claim that its ACV Gummies are organic, when in fact they only include select organic ingredients.

13. To make matters worse, Goli’s false and misleading claims appear alongside representations that Goli’s approach to wellness is “backed by modern science,” and under headings such as “[t]he Studies and Science Behind Goli,” and are parroted and promoted by the members of Goli’s Nutritional Advisory Board.⁸ All of this has the effect of giving a false sense of credibility to Goli, its products, and its claims.

⁷ Indeed, in apparent recognition that the “mother” cannot survive the manufacturing process used to make gummies, Goli recently modified this claim in some, but not all, of its advertising materials. Compare <https://goli.com/pages/faq> (last accessed Aug. 25, 2021) (explaining that the “mother” is present *at the time of manufacturing*), with <http://web.archive.org/web/20210129081053/https://goli.com/pages/faq> Yes! (last accessed Aug. 25, 2021) (“We worked really hard for two years on developing a formula for our Goli Gummy that would be delicious without sacrificing the benefits of apple cider vinegar (“ACV”), and to do that we made sure to keep the mother in our Goli Gummy.”).

⁸ Goli holds its Nutritional Advisory Board out as a “team of the brightest minds in the health industry” who were “hand selected” to help further the company’s products and to communicate their health and wellness benefits.

14. Through its marketing of its products, Goli has positioned itself as a player in the market for dietary supplements aimed at weight management and is a direct competitor to GOLO. Both companies market their products via the same or similar trade channels, including retail and online sales. That marketplace reality means that when Goli makes false and misleading advertising claims, GOLO is harmed.

15. The deception to consumers and harm to GOLO is further compounded by the fact that Goli chose a product name so similar to GOLO's company name and trademark, which has given consumers the mistaken impression that the two companies are somehow affiliated.

16. Indeed, "GOLO" and "Goli" sound and appear nearly identical to one another, and the differentiating letters are immediately next to one another on standard QWERTY keyboards.

17. Both GOLO and Goli sell ingestible dietary supplements, which further compounds the problem with the companies having nearly identical names. Each time Goli expands its product offerings and uses the Goli Marks, it increases the opportunities for confusion and causes harm to GOLO's business.

18. Accordingly, GOLO brings this action for (I) trademark infringement under Section 32(1) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.*, including willful infringement; (II) use of false designations of origin in commerce under Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a); (III) cancellation of a registered trademark under 15 U.S.C. § 1052(d); (IV) false advertising under Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a); (V) statutory unfair competition (trademark infringement) under the Delaware Uniform Deceptive Trade Practices Act, 6 *Del. C.* § 2531 *et*

seq.; and (VI) statutory unfair competition (false advertising) under the Delaware Uniform Deceptive Trade Practices Act, 6 *Del. C.* § 2532 *et seq.*

A. THE PARTIES

19. Plaintiff GOLO is a Delaware limited liability company with its principal place of business at 258 Chapman Road, Chopin Building, Suite 104, Newark, Delaware 19702.

20. Defendant Goli Canada is a corporation organized on October 4, 2018, under the federal laws of Canada with its principal place of business at 1 Westmount Square, Suite 1500, Westmount, H3Z2P9, Quebec, Canada.

21. Defendant Goli Canada has a registered office at 8430 Santa Monica Boulevard, Suite 204, West Hollywood, California 90069. On information and belief, Goli Canada does business in the United States and currently promotes, distributes, markets, ships, offers, and sells its dietary supplements under the Goli Marks throughout the United States, including in Delaware.

22. Defendant Goli US is a corporation organized on April 30, 2019, under the laws of the State of Delaware with its principal place of business at 1 Westmount Square, Suite 1500, Westmount, H3Z2P9, Quebec, Canada.

23. Defendant Goli US does business in the United States and currently promotes, distributes, markets, ships, offers, and sells its dietary supplements under the Goli Marks throughout the United States, including in Delaware.

24. Defendant Michael Bitensky is, and at all relevant times was, the President and Chief Executive Officer of Goli and authorizes, controls, and directs Goli's marketing and advertising claims and strategies, including without limitation its use of the "Goli" brand name. On information and belief, Defendant Bitensky is a citizen of Canada.

25. At all relevant times, each of the Defendants was the agent and alter ego of each other Defendant, acting for and on behalf of each of the other Defendants, all of whom act as a single enterprise, with unity of purpose and control.

B. JURISDICTION AND VENUE

26. The Court has subject matter jurisdiction of this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) because the action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* The Court has supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367 because the claim is so related to the claims arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, that they form part of the same case and controversy under Article III of the United States Constitution.

27. This Court has personal jurisdiction over Goli and Bitensky because, on information and belief, they regularly conduct business in Delaware, including by marketing, advertising, selling, and/or offering for sale the Gummies to persons within Delaware. Goli and Bitensky distribute Goli-branded Gummies to retailers such as Target, Walmart, Bed Bath & Beyond, The Vitamin Shoppe, and GNC that offer to sell and sell the Gummies throughout the United States, including to customers in Delaware. Goli Canada chose to incorporate its U.S. entity, Goli US, in Delaware, taking advantage of Delaware's corporate laws and purposefully and specifically directing its activities at Delaware.

28. Accordingly, the exercise of personal jurisdiction over each Defendant comports with Defendants' right to due process because, as described above, Defendants purposefully availed themselves of the privilege of conducting activities within Delaware or consented to jurisdiction here, such that each should reasonably anticipate being haled into court here. And as alleged herein, Defendants have committed infringement, false advertising, and other tortious conduct in this District, which have caused injury to GOLO in this District.

29. Venue is proper in this judicial District under 28 U.S.C. § 1391(b)–(c) because Defendants are subject to personal jurisdiction in this District and transact business and sales within this District, GOLO resides within this District and transacts business and sales within this District, and the acts complained of herein, including Defendants’ acts of infringement that have injured GOLO, have occurred and continue to occur within this District.

C. THE WELLNESS, WEIGHT MANAGEMENT, AND DIETARY SUPPLEMENT INDUSTRY

30. Obesity is a serious medical problem that has been linked to dangerous health conditions, including Type 2 Diabetes, heart disease, Alzheimer’s disease, dementia, and more. A recent study by the Centers for Disease Control indicates that nearly 7 out of 10 Americans are considered overweight or obese. Over the past decade or so, consumers have become increasingly aware of the health benefits of weight management and the relationship between weight and key health and wellness markers, including reducing the risk of lifestyle diseases. Indeed, recent research shows that the biggest motivator for losing weight among obese Americans is the desire to improve overall health. As a result, those seeking to lose weight are now more likely than ever to be looking to improve health generally and, conversely, those seeking to improve health generally are looking to do so through changes in how and what they eat. These trends have fueled the rise of dietary supplements with weight loss/weight management and overall health benefits. The dietary supplements industry is expected to exceed \$50 billion dollars in the U.S. by 2025.

31. Unfortunately, the industry is also fraught with opportunity for competitors looking to capitalize on the desire of so many people to lose weight and improve their overall health, often by promising “easy” and simple solutions to do so. Many companies, like Goli, do

so through viral social marketing campaigns and the use of affiliate marketing⁹ and paid endorsements, in addition to more traditional television marketing and brick-and-mortar distribution. These trends have led regulators, like the Federal Trade Commission (FTC), to release guidance to consumers on how to evaluate advertising claims about dietary supplements and other weight loss products. For instance, in a blog post entitled “The Truth Behind Weight Loss Ads,” the FTC tells consumers to be particularly skeptical of weight loss and supplement companies who, *inter alia*, claim that one product can “do it all” or address a broad range of health issues, use words like “breakthrough” and “ancient remedies,” use scientific-sounding terms in a misleading way, or make wild promises in product reviews.¹⁰

D. GOLO—ITS PHILOSOPHY, PRODUCTS, AND MARKS

32. GOLO was founded to provide individuals with a natural and effective way to combat obesity and achieve sustainable weight loss and overall better health. Chris Lundin and Jennifer Brooks, GOLO’s founders, along with a talented team, have devoted more than ten years to bringing GOLO’s products to market. Since at least as early as 2013, GOLO has been developing dietary supplements and healthcare services, including programs for weight loss, weight management, nutrition, and lifestyle wellness (collectively, “**GOLO’s Goods and**

⁹ Goli offers a link to its “Ambassador” program on its website, which allows consumers to sign up as Goli Ambassadors, get a referral code, “start earning,” and receive “instant payouts.” <https://www.goli.com> (last accessed Aug. 19, 2021); <https://partners.goli.com/login> (last accessed Aug. 19, 2021). Those who sign up as Ambassadors then get access to Goli’s influencer portal, which provides them with guidance on how to create their social media posts promoting Goli, graphics they can use for posts, and the language they should use to describe Goli’s products and promised benefits.

¹⁰ See e.g., <https://www.consumer.ftc.gov/articles/0261-dietary-supplements> (last accessed Aug. 19, 2021); <https://www.consumer.ftc.gov/articles/truth-behind-weight-loss-ads> (last accessed Aug. 19, 2021).

Services”). GOLO’s team has remained steadfast in its focus on sound research and science to develop a holistic system that addresses weight loss and overall wellness.

33. GOLO offers a complete health plan—the GOLO for Life Plan (**“GOLO Plan”**)—that helps GOLO’s customers make sustainable lifestyle changes that benefit their overall health. The GOLO Plan supports weight loss, reduces hunger and cravings, reduces stress and anxiety, increases immune function, and increases energy. Each part of the GOLO Plan, including its Release dietary supplement, has been clinically tested and proven to promote weight loss and provide improvements in health markers, such as lower levels of blood sugar, reduction in heart disease risk factors, and relief of everyday stress. First-time purchasers of GOLO’s Release supplement receive a free copy of GOLO’s Metabolic Plan. This is one way that the company emphasizes that GOLO offers a safe, healthy, comprehensive approach to weight loss and improved health that produces sustainable results.

34. GOLO first used the GOLO Mark at least as early as April 22, 2013, first used the GOLO Mark in commerce at least as early as May 2, 2013, and has made substantially exclusive and continuous use of the GOLO Mark in commerce since at least as early as April 22, 2013.

35. The GOLO Mark is inherently distinctive and therefore serves as an indicator of a single source behind GOLO-branded Goods and Services.

36. In addition, as a result of GOLO’s extensive and successful use and promotion of the GOLO Mark (including the facts set forth in ¶¶ 37–49, below), the GOLO Mark has acquired secondary meaning, which further strengthens its status as an indicator of a single source behind GOLO-branded Goods and Services.

37. GOLO has invested substantial time, money, and other resources promoting the GOLO Mark for GOLO’s Goods and Services to individuals in all 50 states, including Delaware.

GOLO prominently displays its GOLO Mark on all of GOLO's Goods and Services, its website, and any advertisement promoting or marketing its GOLO Goods and Services.

38. GOLO owns and operates the domain www.golo.com, where GOLO markets, offers to sell, and sells the GOLO Goods and Services under the GOLO Mark. Examples of GOLO-branded products and material images from GOLO's website, which also displays the GOLO Mark on nearly every page, are shown below:





39. Consumers can purchase GOLO-branded Goods and Services directly from GOLO's website and eBay. Until approximately December 2020, GOLO-branded Goods and Services could also be purchased from www.walmart.com.

40. GOLO has also advertised and promoted its Goods and Services under the GOLO Mark on television and other media campaigns, including digital, social (*e.g.*, Facebook, Pinterest, and Instagram), print, and radio. GOLO's Goods and Services have also received physicians' endorsements and customer testimonials.

41. GOLO has enjoyed substantial sales of its Goods and Services that use the GOLO Mark, with customers located throughout the United States, including Delaware.

42. Because of the inherent distinctiveness of, and/or secondary meaning in, Plaintiff's GOLO Mark, the GOLO Mark enjoys substantial goodwill and widespread consumer recognition as a mark.

43. In addition to its common law rights, GOLO owns U.S. Trademark Registration No. 4,436,947 for GOLO, granted by the U.S. Patent & Trademark Office ("USPTO") on November 19, 2013, for use with:

dietary and nutritional supplements (Class 005); and health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition (Class 044).

See Exhibit A.

44. The GOLO Registration issued from U.S. Application Serial No. 85/374,201 that was filed on July 18, 2011, on an "intent to use" basis.

45. The GOLO Registration is valid, subsisting, and currently in full force and effect. Moreover, under 15 U.S.C. § 1065, the GOLO Registration gives GOLO the incontestable right to use the GOLO Mark in commerce for GOLO's Goods and Services.

46. GOLO also owns several other U.S. trademark registrations and applications for marks that consist entirely or partially of GOLO. *See Exhibit B.*

47. GOLO also owns trademark applications and registrations for GOLO-formative marks in countries other than the United States. GOLO has filed oppositions to the registration of Goli's marks in countries where GOLO's marks are registered.

48. GOLO has invested hundreds of thousands of dollars on studies, trials, and research to develop and deliver safe and effective products that provide the marketed benefits, including promoting safe weight loss and improving overall health and wellness. GOLO's investment in product research and development has paid off: GOLO has over 1 million customers, has shipped over 2 million packages of products, and its products are met with much satisfaction from its customers. Indeed, although GOLO provides a 100%, 60-day, money-back guarantee, GOLO's return rate is very low: under 3% last year.

49. GOLO's customers are individuals who are interested in improving their health through better nutrition, weight management, and lifestyle changes. To grow its business, GOLO competes for the attention of consumers interested in improving their health against not only traditional diet plan based weight loss companies (such as Weight Watchers, Jenny Craig and similar programs) but also against more tech-based weight management approaches (like Noom) and companies that offer nutritional supplements that promise weight loss, fuel burning, and energy benefits (like Goli's products or the Lipozene Supplement). Where another company promises the same benefits or results as GOLO does through an easier or less comprehensive product or program (*e.g.*, by merely taking a supplement) or makes false claims directly or indirectly about the results its products will deliver or attributes it has, GOLO is at a competitive disadvantage in the marketplace.

E. DEFENDANTS LAUNCH GOLI’S PRODUCTS, WHICH COMPETE WITH GOLO’S PROPRIETARY WEIGHT LOSS AND WELLNESS PRODUCTS.

50. Goli was founded in 2019 by Bitensky, who remains the company’s President and Chief Executive Officer today. Goli’s website describes the company as an “inventive, people-focused nutrition company who believe that happiness and wellness go hand in hand”¹¹ with the goal of “creat[ing] innovative products that make living a healthy lifestyle simple and accessible to everyone.”¹²

51. Prior to the launch of Goli’s first product, the ACV Gummies, in September 2019, Bitensky, among others, developed the formulation for the ACV gummies and applied for a patent for the ACV gummies. Patent Nos. 10,791,755, 10,980,265, and 10,980,266 were issued with Bitensky listed as an inventor, and with Goli as the applicant and assignee.¹³

52. Beginning in or around September 2019, Goli began marketing its ACV Gummies as the “World’s First Apple Cider Vinegar Gummy.”¹⁴ In a 2019 press release announcing the launch of the ACV Gummies, Bitensky claimed the tasty gummies were a “breakthrough” because they provide a “delicious way to mask the flavor of ACV while retaining its core benefits.”¹⁵ Likewise, in a live commercial sponsored by Goli during a 2019 episode of “The Ellen DeGeneres Show,” Ellen described the product as one that provides “all the benefits of

¹¹ See <https://goli.com/pages/about-us> (last accessed Sept. 16, 2021).

¹² See <https://goli.com/pages/nutritional-advisory-board> (last accessed Aug. 19, 2021).

¹³ See also U.S. Patent Nos. 10,980,265 (Apr. 20, 2021), 10,980,266 (Apr. 20, 2021), 10,791,755 (Oct. 6, 2020).

¹⁴ See, e.g., <https://goli.com/> (last accessed Aug. 23, 2021).

¹⁵ See <https://www.prnewswire.com/news-releases/goli-nutrition-launches-worlds-first-apple-cider-vinegar-gummy-300922883.html> (last accessed Aug. 19, 2021).

apple cider vinegar”—which “helps the body with so many things”—but “without the sour taste.”¹⁶

53. Goli’s website touts its products, including the ACV Gummies, as “easy-to-take, and easy-to-integrate products that don’t interrupt your busy lifestyle, but actually complement it.”¹⁷ The company likewise includes taglines in its marketing that promote its Gummies as a “simple” route to wellness. For instance, on the “About Us” page of its website, Goli includes the following:

We are driven by the belief that everyone has the power to make their own happiness. And that power begins with being healthy. Easier said than done, right? We totally agree. You don’t always have time. The world revolves quickly and your whole day can change in a heartbeat. Not to worry, we’re one step ahead of you. Because we work hard to invent smart new supplements and provide customized advice to help keep your nutrition goals right on track. If this sounds good to you, well, it’s because it really is. Because we do it with easy-to-take, and easy-to-integrate products that don’t interrupt your busy lifestyle, but actually complement it.

Goli. It’s the simple way to wellness.

54. Similarly, the following appears on each page of Goli’s website that promotes its ACV Gummies:

¹⁶ See <https://www.ellentube.com/article/ellen-introduces-goli-gummies.html> (last accessed Aug. 19, 2021). Goli also prominently features this live commercial on the home page of its website, and has clipped the video to edit out the portion where Ellen discloses that she’s doing a “paid commercial” for Goli. <http://www.goli.com/> (last accessed Aug. 23, 2021). By doing so, Goli gives consumers the false impression that the video is an independent endorsement by a well-known celebrity, rather than a sponsored advertisement by a paid endorser.

¹⁷ See <https://goli.com/pages/about-us> (last accessed Aug. 18, 2021).

WHY WE DO IT

Goli Nutrition is an inventive, people focused nutrition company that is committed to providing the world with a key to sustainable wellness through innovative products that are suitable for any lifestyle. Goli Nutrition strives to make health simple by helping consumers reach their nutrition goals with products that make taking daily supplements enjoyable. Goli Nutrition's deep rooted commitment provides the world with easy access to wellness through innovative products that are Gluten-Free, Non-GMO, Vegan, Gelatin-Free, Kosher and free of colors and flavors from artificial sources.










– Goli Nutrition. Health Simple.

55. Nearly the same text appears on the product label on each bottle of Goli ACV Gummies, as shown below:







Taste The Apple. Not The Vinegar.

Goli Nutrition is an inventive, people focused nutrition company driven by the belief that happiness and wellness go hand in hand. Our goal was to create an easy, nutritious and delicious way for everyone to incorporate Apple Cider Vinegar into their daily routine. Our Apple Cider Vinegar Gummies produce the same age-old benefits of traditional Apple Cider Vinegar without the unpleasant taste!¹ Goli Gummies are Gluten Free, Organic, Non-GMO, Gelatin Free and Vegan. Health Simple.

56. Despite the ease and convenience of gummies, Goli promises consumers that its ACV Gummies deliver a host of benefits, including many of the very same benefits for which GOLO's products are sold. For example, the following image from the box in which customers receive products ordered from Goli's website shows a portion of Goli's chart that identifies "Appetite Control and Weight Loss," "Lowers Blood Sugar Levels," and "Improves Immune System" as among the benefits of Goli's ACV Gummies:

BENEFITS COMPARISON		goli ACV Gummy	VS	Traditional ACV
	APPETITE CONTROL & WEIGHT LOSS			
	LOWERS BLOOD SUGAR LEVELS			
	IMPROVES IMMUNE SYSTEM			

57. Similarly, the Goli website included the table below (until at least March 2021), which listed a host of benefits purportedly provided by the ACV Gummies:

Supports Gut Health for	Healthy Digestion		Supports a Healthy	Immune System	
Supports Healthy	Weight Management		Supports	Heart Health	
Helps Reduce	Appetite		Helps Improve	Energy	

58. Goli and Bitensky have masterminded a hybrid multi-level marketing scheme to create a paid influencer partner program that offers significant payouts to influencers to promote Goli's products and disseminate false claims. On information and belief, Goli and Bitensky began by using so-called "micro-influencers" with significant followings on various social media platforms, but without the "macro" influence associated with traditional celebrities. Those

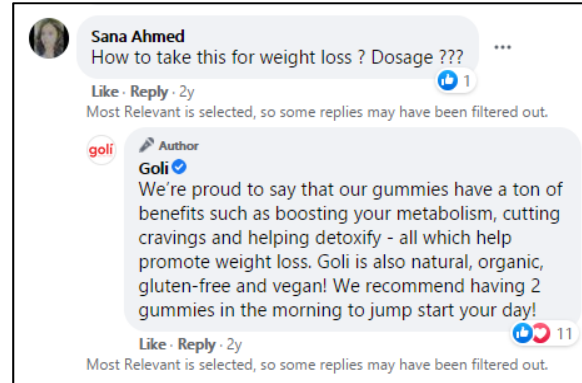
micro-influencers used their platforms (in exchange for payment from Goli) to spread Goli's false claims to millions of consumers.

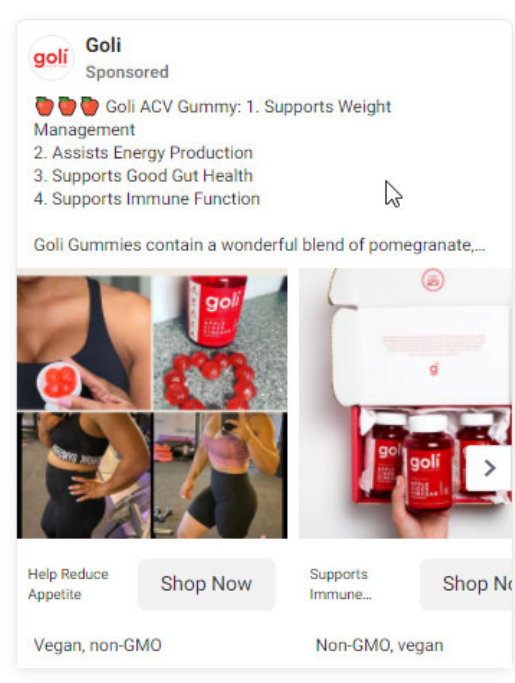
59. Riding on the success of Goli's micro-influencers, Goli and Bitensky were then able to recruit more prominent influencers and traditional celebrities. Celebrities such as Jennifer Lopez and Alex Rodriguez now promote Goli's products and their supposed benefits.¹⁸ These celebrities and others have spread Goli's false claims to an even wider audience of trusting consumers.

60. Sponsored ads posted by Goli's affiliate marketers on social media platforms, including Facebook, YouTube, and Instagram, tout the product's supposed benefits and promise big results, as shown in the images below:



¹⁸ See <https://goli.com/pages/home-jlar> (last accessed Aug. 22, 2021) (welcoming “global icons Jennifer Lopez and Alex Rodriguez” to the Goli team).





61. Sometime in late 2020 or early 2021, many of Goli's weight management claims were challenged by another competitor in a proceeding in front of the National Advertising Division (the "**NAD**"). See **Exhibit C**. Representative examples of the challenged claims related to weight management included:

- "Supports healthy weight management. Scientific studies have shown that those who consume Apple Cider Vinegar had better weight management compared to those who did not. Combining Apple Cider Vinegar with a well-balanced diet helps support healthy weight management"
- "Imagine all these benefits in one gummy: . . . weight control"
- "They have so many health benefits & the b12 in them contributes to reducing appetite and supporting healthy weight management"
- "It helps me with my weight loss and digestion. And when I get those 3 p.m. cravings, Goli suppresses my appetite"
- "The benefits: . . . Supports Weight Management . . . Helps Reduce Appetite" [with before/after pictures of a Goli user who has lost weight]
- "Goli supports weight management" [with a picture of a thin Goli user holding up very large shorts]

- “[J]ust look at this, always looking good but just a lot less of me. . . . Benefits of the delicious Goli Gummies? . . . Support Healthy Weight Management” [with before/after pictures of a Goli user who has lost weight]
- “I love seeing results without heavy exercise . . . The benefits: . . . Supports Weight Management . . . Helps Reduce Appetite” [with before/after pictures of a Goli user who has lost weight]
- “Battling the effects of menopause. Results ✓ . . The benefits . . . Supports Weight Management . . . Helps Reduce Appetite” [with before/after pictures of a Goli user who has lost weight]
- “Goli makes weight loss simple.”

Id. at 1–2.


62. The challenger also asked the NAD to evaluate Goli’s implied weight loss claims that Goli’s ACV Gummies “would result in meaningful weight loss without the need for special diet or exercise” and “help women lose the weight that often is gained following menopause,” as well as a variety of Goli’s other claims related to the ACV Gummies’ supposed benefits. *Id.* at 2.

63. Goli did not submit any support to the NAD for its weight management claims, but instead “agreed to permanently discontinue all claims” about its ACV Gummies offering weight management benefits, among other claims, all of which (by that time) had already permeated the market and established Goli’s foothold in the health supplement industry. *Id.* at 9.

64. For other claims related to the ACV Gummies’ ability to increase energy and improve skin health, the NAD recommended that Goli discontinue the claims because they were unsubstantiated and/or misleading. *Id.* at 14. In response, Goli agreed to discontinue those claims. *Id.*

65. Nonetheless, to this day, Goli markets its ACV products as having appetite control, weight loss, and weight management benefits. Through Goli’s viral marketing campaign, Goli’s weight management and other false claims continue to proliferate on social media and elsewhere.


66. Indeed, Goli's listing for its ACV Gummies on Amazon to this day includes the following list of promised benefits:¹⁹

BENEFITS COMPARISON	goli ACV Gummy	Traditional ACV
 APPETITE CONTROL & WEIGHT LOSS	✓	✓
 LOWERS BLOOD SUGAR LEVELS	✓	✓
 IMPROVES IMMUNE SYSTEM	✓	✓
 MADE WITH 'THE MOTHER'	✓	✓
 CONTAINS HIGHLY NUTRITIOUS ACETIC ACID (5%)	✓	✓
 INFUSED WITH SUPERFOODS (Pomegranate, Beetroot)	✓	✗
 ENRICHED WITH VITAMINS (B9, B12)	✓	✗
 SAFE FOR TOOTH ENAMEL	✓	✗
 GOOD TASTE	✓	✗
 YUMMY SMELL	✓	✗
 EASY TO TAKE	✓	✗

67. Goli's storefront on Amazon likewise promotes the weight management benefits of its ACV Gummies.²⁰

¹⁹ See https://www.amazon.com/Worlds-Vinegar-Vitamins-Goli-Nutrition/dp/B07R8GD47V?ref_=ast_sto_dp&th=1 (last accessed Sept. 16, 2021).

²⁰ See https://www.amazon.com/stores/page/C30B8E02-8291-40AF-875F-5A7F44AFCA39?ingress=2&visitId=b0d0b378-62e8-4f3c-bb9e-47920a4b27f1&ref_=ast_bln (last accessed Aug. 19, 2021).




BENEFITS

Goli Nutrition > Benefits

[Follow](#) [HOME](#) [INSIDE THE GUMMY](#) [BENEFITS](#) [SHOP NOW](#) [POSTS](#)


ACV BENEFITS

Apple Cider Vinegar offers many benefits thanks to its high concentration of acetic acid:




Helps improve COMPLEXION

Apple Cider Vinegar can help restore the skin's natural acidity, which may in turn, lead to healthier looking skin.




Supports healthy DIGESTION

Did you eat way, way, too many cheese cubes at the party last night? We hear you. Feeling a bit of heartburn? We feel for you too. Apple Cider Vinegar is a prebiotic that helps to clean out your digestive system: we won't go into further details - you get the idea! Apple Cider Vinegar can also help with overall gut health.




Promotes a healthy HEART

Not only can Apple Cider Vinegar be one strategy to help maintain cholesterol in a healthy range, but our Goli Gummy is also packed with Vitamins B9 and B12. Vitamin B12 helps keep your blood cells healthy (along with many other benefits) and Vitamin B9 aids in producing energy. Combining this dynamic duo with the Apple Cider Vinegar in our Goli Gummy was an essential step towards creating a nutritious daily health gummy for you.




Helps manage WEIGHT

Apple Cider Vinegar has historically been thought to help manage weight due to its high levels of acetic acid. Apple Cider Vinegar also helps to curb your appetite and increases your feeling of being full. Scientific studies have shown that those who consumed Apple Cider Vinegar experienced greater weight loss compared to those who did not. Combining our Goli Gummy with a well-rounded lifestyle can lead to noticeable results.



Helps your body DETOXIFY

Reducing sugar and processed foods, and following a healthy diet can be hard. AND, while eating fresh fruits and vegetables, whole grains, and lean proteins is the way to go - it doesn't always happen. So to help with your daily goal of living a healthy lifestyle, Apple Cider Vinegar works in your body to help combat the toxins you eat by increasing good bacteria in the gut.



Enhances ENERGY

Apple Cider Vinegar helps control blood levels and without a spike in blood sugar levels you should experience a more consistent level of energy throughout the day. AND as a bonus, when fatigue is related to lactic acid build-up in your body as a result of exercise or stress, Apple Cider Vinegar may help to restore energy.

68. And Goli's paid affiliates continue to push the ACV Gummies' weight-loss benefits on social media. Depicted below are a few illustrative examples recently posted on Instagram by Goli's paid affiliates:



simply_t_nicole • Follow
Paid partnership with goligummy



simply_t_nicole As a mom on the go, I try to incorporate things I can use quickly and Goli apple cider vinegar gummies are one of them.

Apple Cider Vinegar is a source of antioxidants, B9 & B12

Incorporating Goli Gummies to your daily routine helps with

- 🍏 Digestion
- 🍏 Weight management
- 🍏 Healthy Immune System
- 🍏 Improve Energy
- 🍏 Supports heart health

Have you tried Goli Gummies? What are you waiting for?



Be the first to like this

1 DAY AGO



Add a comment...

Post



nicoleybrassfield • Follow
Paid partnership with goligummy



It's so dang hard to be consistent with taking our daily vitamins. We've tried everything but @goligummy makes it easy with their yummy taste.

Not only are they delicious but their apple cider vinegar gummies have so many benefits!

- Supports healthy digestion
- Supports a healthy immune system (I think we all need this right now)
- Helps improve energy
- Supports heart health
- Supports healthy weight management
- Helps you feel full longer

Click link below and use code



Liked by peralta022413gonzalez and others

1 DAY AGO



Add a comment...

Post



iam_whitneybrown • Follow



golgummies @golgummy the worlds FIRST apple cider vinegar and the NEW Superfruits gummies!

Benefits:
Supports healthy digestion
Supports a healthy immune system
Weight management
Helps improve energy
Helps reduce appetite
Supports heart health

They're absolutely YUMMY!
Get yours today!
Use my code "whitney08" for a discount
#golipartners #golipartner
#acvgummies #applecider
#golinitration #delicious #gummies
#ad #acv #goli #apple
#withouttheawfultaste



Liked by fallon_5384 and others

5 DAYS AGO



Add a comment...

Post



utkars26 • Follow



Paid partnership with goligummy

Benefits :

- SUPPORTS HEALTHY DIGESTION
- SUPPORTS A HEALTHY IMMUNE SYSTEM
- WEIGHT MANAGEMENT
- HELPS IMPROVE ENERGY
- HELPS REDUCE APPETITE
- SUPPORT HEART HEALTH

You can use my Promo code & link to get 10% off

PROMO CODE - Utkars26

ACV PROMO LINK :



Be the first to like this

1 DAY AGO



Add a comment...

Post



nikita_jiselle • Follow

Paid partnership with goligummy
South Carolina



nikita_jiselle Have you tried The
@goligummy Trio yet? 🤔

🍎 ACV help supports: Healthy
Digestion, Weight Management,
Helps Reduce Appetite, Healthy
Immune System, Improve Energy and
Heart Health.

🍊 SuperFruits supports: Skin Health
& Appearance, Restore Radiance, Skin
Structure & Elasticity, and Essential
Nutrients.

💙 Ashwagandha supports: Reduce
Stress, Quality of Life, Improve Sleep,
Memory & Concentration, Physical
Performance, and Sexual Function.

🔥 For a limited-time use my code



Liked by trendi.ness and others

4 DAYS AGO



Add a comment...

Post



mrsdiy_ • Follow

Paid partnership with goligummy
Edmond, Oklahoma



mrsdiy_ I have been influenced, guys!
These @goligummy gummies are
magic in a bottle! I've been taking
them for a little over a week now and
it's amazing how much better I feel!
Not only do they help support healthy
digestion, but they also aid in
metabolism, support your immune
system, and apple cider vinegar is
known to support healthy weight
management. Check out my stories for
more on what they've done for me! I
also have a special discount code just
for you guys - code mrsdiy gets you
10% off your order!

#golipartner #ad #sponsored
#acvgummies #golination
#goligummies #healthsimple #nongmo



Liked by calliefears and others

1 DAY AGO



Add a comment...

Post



giuseppe_health • Follow

Promo Code: believe421
Link in Bio.

#golinutrition #goli
#tastetheapplenotthevinegar #acv
#healthylifestyle #dietplan #digestive
#weightlossjourney #veganfood
#hearthealth #withouttheawefultaste
#digestion #glutenfree #organic
#antioxidants #antibodies
#immunesystem #stressrelief
#sexualhealth #healthyfood
#immunesystem #ashwagandha
#ashwa #calm #paidpartnership

4w

kharku_06 Promote it on
@organic_community

4w Reply

Liked by jayda.lagrone and others

JULY 20

Add a comment... Post



giuseppe_health • Follow

Healthy Lifestyle

Link in Bio For More Info

#golinutrition #goli
#tastetheapplenotthevinegar #acv
#healthylifestyle #dietplan #digestive
#weightlossjourney #veganfood
#hearthealth #withouttheawefultaste
#digestion #glutenfree #organic
#antioxidants #antibodies
#immunesystem #stressrelief
#sexualhealth #healthyfood
#immunesystem #ashwagandha
#ashwa #calm #paidpartnership

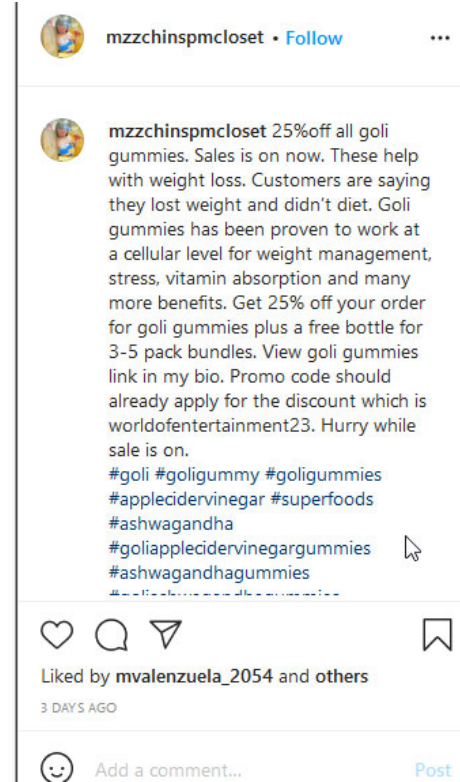
3d

vish.alpanwar933 Promote it on
@unique_community

Liked by plushgirl3 and others

3 DAYS AGO

Add a comment... Post



69. This consumer perception of Goli’s ACV Gummies having a multitude of benefits that they do not actually has increased Goli’s market share to the disadvantage of competitors who are truthful in their advertising, including GOLO.

70. Moreover, Goli now makes those same unsubstantiated and misleading claims in connection with one of its new products, as discussed below.

71. In January 2021, Goli announced the launch of its second dietary supplement, an ashwagandha gummy called Ashwa.

72. Ashwagandha is an ancient Indian herbal pharmaceutical and an adaptogen, which Goli defines as a plant that helps the body maintain balance and adjust to stress. Consistent with that definition, Goli touts Ashwa as a product that will help people “keep calm and de-stress” as shown in the below image from the Goli website:

Introducing
ASHWA
WORLD'S MOST POWERFUL
ASHWAGANDHA GUMMIES
Keep Calm
and De-Stress.
SHOP NOW

Delicious, effective, and highly bioavailable. **Made with KSM-66® Ashwagandha & Vitamin D.**

Gluten-Free Non-GMO Plant-Based Vegan Clinically Proven KSM-66®

WE'RE YUMMY!

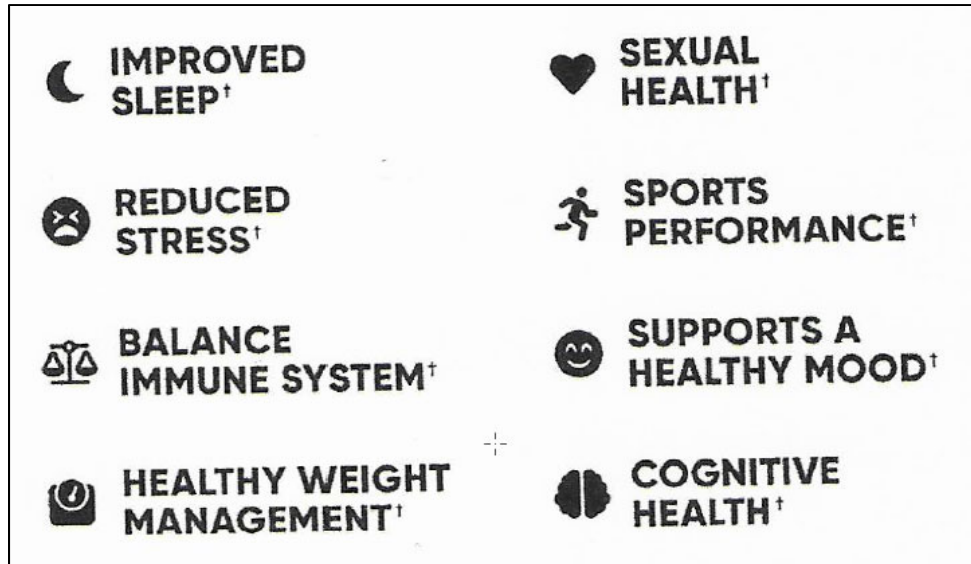
goli[®] NUTRITION
ASHWAGANDHA GUMMIES
Relax Restore Unwind
Mixed Berry
DIETARY SUPPLEMENT
60
MADE IN CALIFORNIA with U.S. and globally sourced

Relax. Restore. Unwind.




73. But Goli's promises as to its Ashwa Gummies do not stop at its calming and stress-relieving benefits. As it did with its ACV Gummies, Goli markets the Ashwa Gummies as providing a host of other benefits, including weight management and other benefits that GOLO's products provide, including reduced stress, and immune system support. Indeed, the Goli website conveys the following as purportedly "clinically proven" benefits consumers can expect from the Ashwa Gummies:

KSM-66® ASHWAGANDHA HAS BEEN CLINICALLY PROVEN TO HELP:			
REDUCE STRESS	+	WEIGHT MANAGEMENT	+
YOUR MOOD	+	YOUR SLEEP	+
IMMUNE SYSTEM	+	PHYSICAL PERFORMANCE	+
MEMORY & COGNITION	+	SEXUAL FUNCTION	+

74. Consumers also receive paper materials with their Ashwa Gummies that identify the same purported benefits, as shown in the image below:




75. Goli also touts the same benefits through its affiliate network in sponsored ads on social media, as shown in the examples below:

 **Goli** 
Sponsored · 

BACK IN STOCK! Free Shipping on all Orders!
KSM-66®Ashwagandha has been clinically proven to help:

- ♥ Supports Weight Management
- ♥ Reduces stress
- ♥ Supports healthy sleep
- ♥ Supports muscle strength & recovery post exercise

Order NOW
www.goli.com/ashwa



 **Summer Rae Ruegger with Goli.**
Sponsored · 

 Welcome to the family, Ashwa!

What makes As... Continue Reading



ASHWA[®]

SALE

- 🕒 improved sleep
- 🧘 reduced stress
- 🛡 balanced immune system
- 🏋 healthy weight management
- 🏃 sport performance
- 😊 supports healthy mood
- 🧠 cognitive health

ASHWA.COM
Goli Ashwagandha
World's Most Powerful Ashwagandha Gummi...

[Shop Now](#)

KSM-66® Ashwagandha has been clinically proven to help:

Reduce and Maintain Healthy Body Weight



World's Most Potent Ashwagandha on the market
Tackle Appetite, Weight Management, Muscle Size, Skin care goals and MUCH MORE with our Top-Selling VARIETY PACK! ♥ ♥ ♥ Get all these... [more](#)

Swipe up to view website

 **goli**
Sponsored

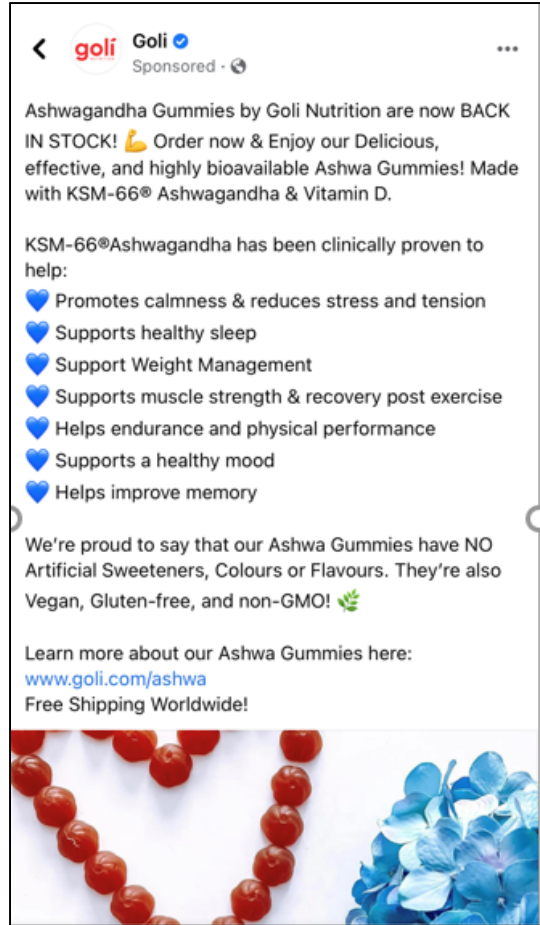
When weight management is simple and delicious



[Shop Now](#)

529 likes

[goli](#) Control the weight gain with Ashwa Gummies. Get the Most Outstanding Results in Just 30 Days w/ Money Back Guarantee!



76. Expanding even further into the health supplement industry, in approximately May 2021, Goli added another supplement (again, in gummy candy form) to its line of products: the Superfruits Gummies. As with the ACV and Ashwa Gummies, Goli touts the Superfruits Gummies as offering sundry health and wellness benefits, underscoring its positioning in the health and wellness industry:

**Improves
COLLAGEN FORMATION**

Goli Superfruits Gummies contain Vitamin C, an essential nutrient which supports collagen formation within the skin. Collagen plays a key role in maintaining skin's elasticity and youthful appearance.

**Improves
SKIN HEALTH & APPEARANCE**

Bamboo Silica, one of the key ingredients in Goli Superfruits Gummies, is often used to reduce skin roughness and improve the overall appearance of skin.

**Supports
SKIN STRUCTURE**

Goli Superfruits Gummies contain Bamboo Silica which promotes healthy collagen formation. Collagen, the second most abundant substance in our body, helps the skin maintain its structure and integrity.

**Supports the
IMMUNE SYSTEM**

Goli Superfruits Gummies contain Vitamins A and C, which both support a healthy immune system based on a number of scientific studies.

**Powerful
ANTIOXIDANT**

Goli Superfruits Gummies contain carefully selected ingredients that contain powerful antioxidants. Both vitamin A and E reduce free radicals within the body.

**Provides
ESSENTIAL NUTRIENTS**

Goli Superfruits Gummies are formulated with essential nutrients, Vitamins A, C and E, which support normal functions throughout the body.

**Helps
RESTORE RADIANCE**

Our formula contains antioxidants as well Silica, which help to reduce the impact free radicals and improve overall skin texture and appearance to help you feel radiant both inside and out.

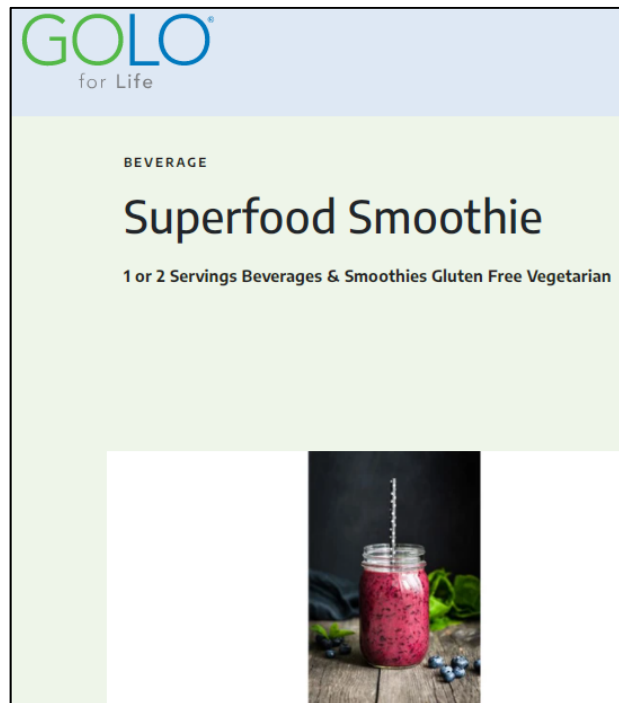
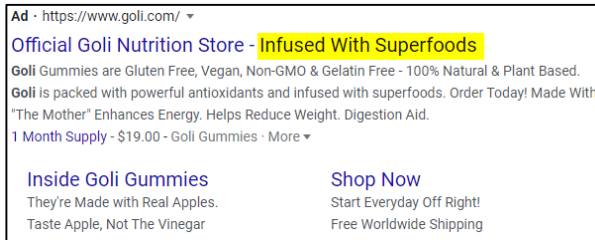
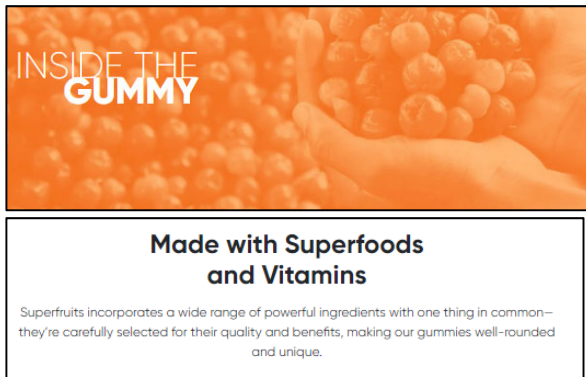
**Enhances
SKIN YOUTHFULNESS**

Collagen plays an important role in maintaining our skin's youthfulness and elasticity. Vitamin C and Bamboo Silica support collagen formation in the skin, leaving skin glowing and youthful.

77. Notably, its Superfruits' packaging follows Goli's monochromatic scheme, but utilizes a bright orange bottle very similar to GOLO's orange branding connected to its Release supplement (as shown below on both GOLO's current and historic packaging designs):



78. When marketing its Superfruits supplement, Goli (and its influencers and celebrity partners) utilizes marketing similar to GOLO, including the use of “super” in the product name and claiming that it includes “Superfoods,” which overlaps with GOLO’s “Superfoods” marketing and “GOLO SuperFuel” trademark:



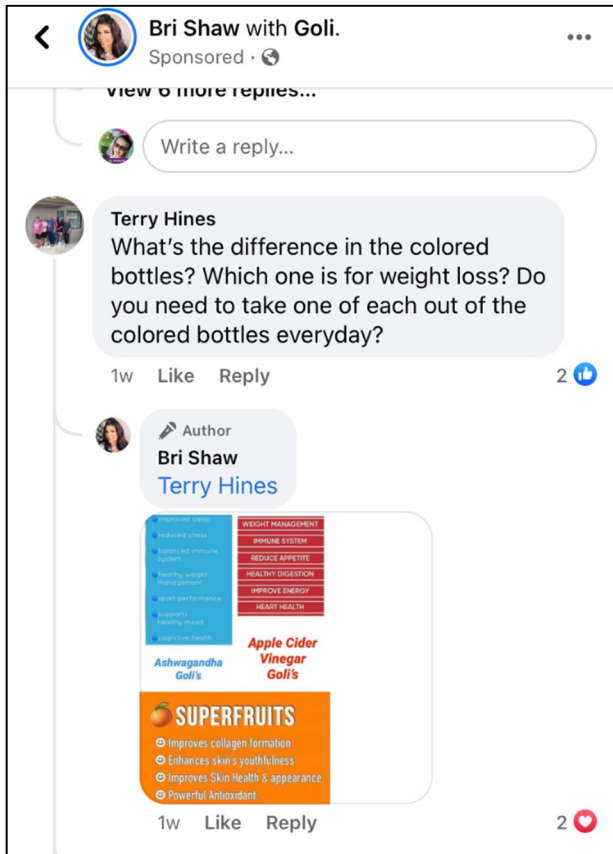
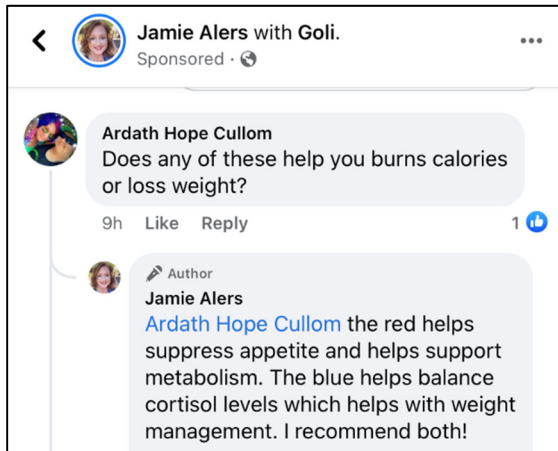
79. All of Goli’s products are sold in interstate commerce on Goli’s website (www.goli.com), other online retailers, including Amazon, and in brick-and-mortar stores throughout the United States.

80. Through their development, marketing, and packaging of the Goli-branded products, Defendants have positioned Goli's products as delivering many of the same benefits or results that GOLO's products provide. By doing so, Goli is competing with GOLO for consumers who are looking for products that will help them achieve those results, *i.e.*, weight loss and improved wellness.

81. Consumers recognize that GOLO and Goli both offer supplements to assist in weight management, viewing the two companies' products as competitive, as reflected by surveys that GOLO conducted in 2020. GOLO polled visitors to its website to determine whether they were considering options other than GOLO, including Jenny Craig, Lipozene, Noom, Goli, Nutrisystem, and Weight Watchers. The results reflected that in just a six-day period, over 900 consumers who considered a product other than GOLO considered Goli as their alternative. Indeed, more people indicated they considered Goli's Apple Cider Vinegar product than Nutrisystem, Jenny Craig, or Lipozene.

82. GOLO also polled customers who made a purchase from its website to determine who those consumers viewed as GOLO's competitors. If customers who opted into the poll indicated that they were considering another weight loss product, they were asked to specify the competitor in a blank box. In the first seven months of 2020, 515 customers indicated that they were considering purchasing Goli instead.

83. Recent social media comments also reflect that interested consumers also consider Goli when they are looking for a way to lose weight (and that Goli's paid ambassadors readily claim Goli's products are just that):



F. GOLI AND ITS JUNIOR USE OF THE GOLI MARKS

84. Goli owns the domain www.goli.com, which describes Goli as “an inventive, people-focused nutrition company who believe that happiness and wellness go hand in hand. It’s our goal to help you reach your nutrition goals while enjoying your daily supplements. . . . We are driven by the belief that everyone has the power to make their own happiness. And that

power begins with being healthy. Easier said than done, right? We totally agree. You don't always have time. The world revolves quickly and your whole day can change in a heartbeat. Not to worry, we're one step ahead of you. Because we work hard to invent smart new supplements and provide customized advice to help keep your nutrition goals right on track. . . . **Goli. It's the simple way to wellness.**"²¹ Consumers can purchase Goli-branded dietary supplements directly from Goli's website, which has an image of, or reference to, Goli on nearly every page.

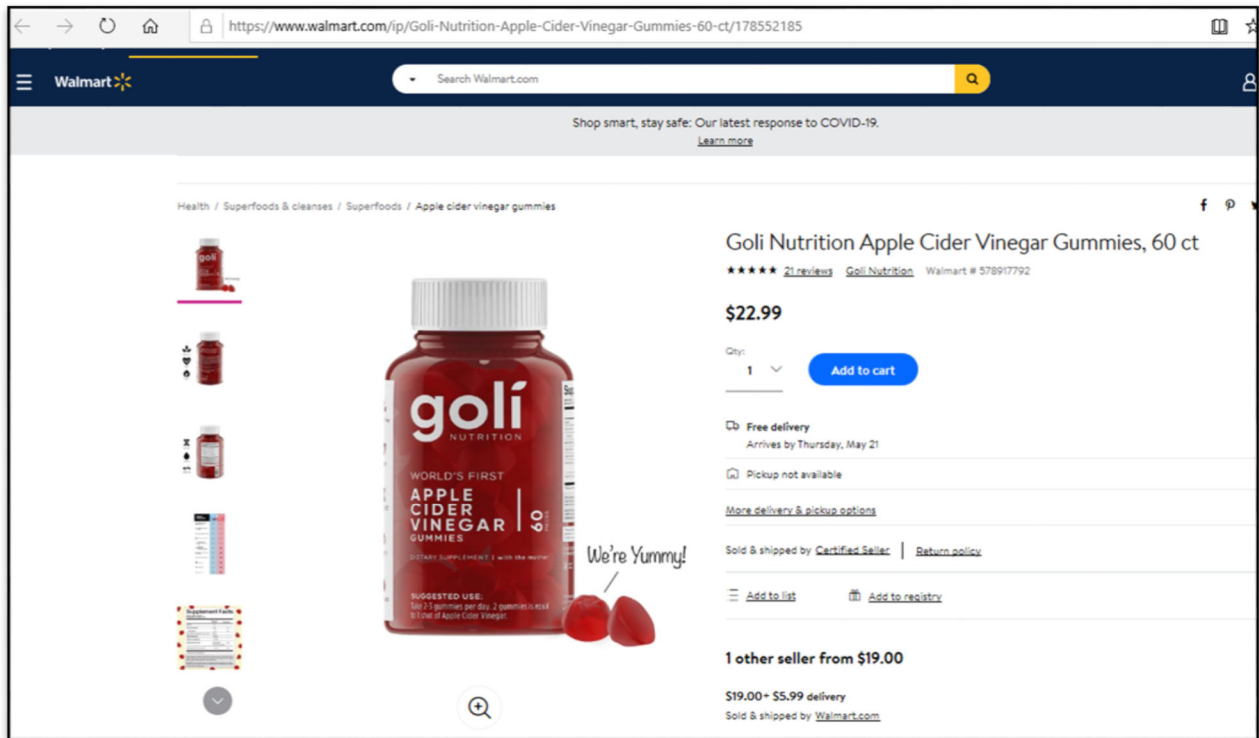
85. Goli uses the Goli Marks as a trade name – meaning, in the name of their companies – and as a trademark on dietary supplements. Goli labels each of their dietary supplements, including new supplements that they introduce into the marketplace, with the Goli mark.

86. Goli uses the Goli Marks in television advertisements, social media marketing, (including Facebook, Instagram, YouTube, and Pinterest) to direct consumers to Goli's website to make purchases. Goli also distributes its Goli-branded products to retailers such as Target, Walmart, Bed Bath & Beyond, The Vitamin Shoppe, and GNC that offer to sell and sell Goli-branded products throughout the United States, including Delaware.

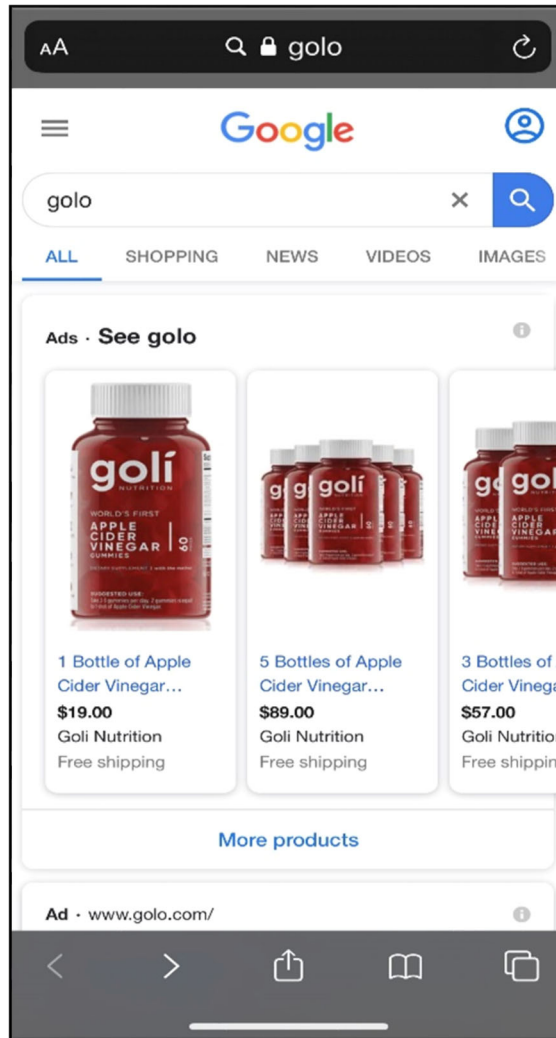
87. For example, the following screenshot shows the Goli ACV Gummies for sale on Walmart's website²²:

²¹ See <https://goli.com/pages/about-us> (last accessed Aug. 18, 2021).

²² See <https://www.walmart.com/ip/Goli-Nutrition-Apple-Cider-Vinegar-Gummies-60-ct/178552185> (last accessed Aug. 18, 2021).

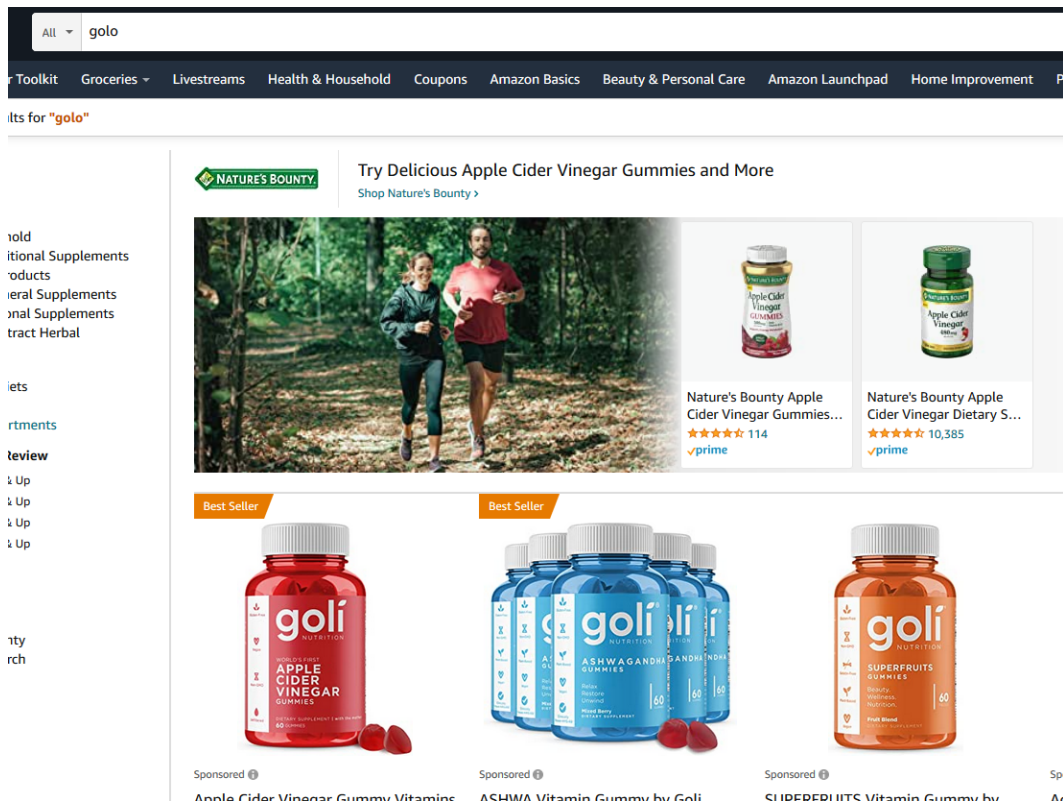


88. On information and belief, Goli purchased GOLO as a keyword to ensure that Internet users who search for GOLO on Google or other search engines would be redirected to Goli's website, despite their intention to find GOLO products. On information and belief, Goli paid Google to show Goli Gummies each time someone searches "GOLO" on Google, even though the person is looking for information on GOLO Goods and Services. For example, the image below is a screenshot of the results page after searching Google for GOLO on a smartphone:



89. Goli's purchase and use of GOLO as a search engine keyword further demonstrates its intention to trade off of GOLO's goodwill and market and sell Goli-branded products to the same consumers as GOLO.

90. Similarly, a visitor to Amazon's site who searches for "GOLO" receives multiple sponsored product suggestions for Goli's Gummies:



91. Goli exploited its use of the confusingly similar Goli Marks and the fact that GOLO does not offer GOLO's Goods and Services on Amazon by sponsoring its products on search result pages for shoppers who search for "GOLO."

92. At the time Goli first used any of the Goli Marks, Goli was aware of GOLO's use of the GOLO Mark and U.S. Trademark Reg. No. 4,436,947. At the time Goli first used any of the Goli Marks, Goli had constructive notice of GOLO's claim of ownership in the GOLO Mark, under 15 U.S.C. § 1072.

G. DEFENDANTS' APPLICATIONS TO REGISTER, AND REGISTRATION OF, GOLI

93. On May 5, 2020, the USPTO granted to Goli Canada Trademark Registration No. 6,047,784 for GOLI (the "**Infringing Registration**") for: healthcare products, namely, dietary supplements, nutritional supplements, vitamins, and gummy vitamins (Class 005); and online retail store services and wholesale distributorship services featuring dietary and nutritional

supplements, food products, and beauty products, namely, shampoo, conditioner, beauty mask, skin cleanser, toner, and non-medicated exfoliating preparations for skin and hair (Class 035).

Goli Canada represented to the USPTO that Goli Canada first used GOLI on the goods and services listed in the Infringing Registration in April 2019. A true and correct copy of the Infringing Registration is attached hereto as **Exhibit D**. Goli Canada filed the application that led to issuance of the Infringing Registration on January 14, 2019, alleging a priority date of November 6, 2018.

94. Goli Canada has also filed applications to register the following trademarks with the USPTO (the “**Infringing Applications**”):

- a) GOLI, filed January 14, 2019, alleging a priority date of November 6, 2018, Serial No. 88260529, for: beauty products, namely, shampoo, conditioner, beauty mask, skin cleanser, toner, non-medicated exfoliating preparations for skin and hair; beauty creams and beauty serums (Class 003); and food products, namely, apple cider vinegar, gummy candies, and beverages based on apple cider vinegar (Class 030);

goli

- b) **goli**, filed March 12, 2019, alleging a priority date of February 15, 2019, Serial No. 88976981, for: Healthcare products, namely, dietary supplements, nutritional supplements, vitamins, and gummy vitamins (Class 005); and

goli
NUTRITION

- c) **goli**^{NUTRITION}, filed January 14, 2019, alleging a priority date of December 11, 2018, Serial No. 88261174, for: beauty products, namely, shampoo, conditioner, beauty mask, skin cleanser, toner, non-medicated exfoliating preparations for skin and hair; beauty creams and beauty serums (Class 003); healthcare products, namely, dietary supplements, nutritional supplements, vitamins, and gummy vitamins (Class 005); and online retail store services and wholesale distributorship services featuring dietary and nutritional supplements, food products, and beauty products, namely, shampoo, conditioner, beauty mask, skin cleanser, toner, non-medicated exfoliating preparations for skin and hair (Class 035).

95. When Goli filed the first of its Infringing Applications on January 14, 2019, Goli was aware of GOLO’s use of the GOLO Mark, U.S. Trademark Reg. No. 4,436,947, and had constructive notice of GOLO’s claim of ownership in the GOLO Mark, under 15 U.S.C. § 1072.

96. Goli did not use any of the Goli Marks or file any trademark application anywhere in the world before July 18, 2011 (or, necessarily before May 2, 2013 and April 22, 2013). GOLO is thus the senior user of GOLO with rights superior to any rights Goli may have in any of the Goli Marks.

97. Goli adopted the Goli Marks, filed the Infringing Applications, and filed the application that resulted in the issuance of the Infringing Registration in bad faith, with knowledge of GOLO's use of GOLO and with knowledge of GOLO's Trademark Registration for GOLO, with the intent to profit from the distinctiveness of, and goodwill in, the nearly identical GOLO Mark for use with identical or at least closely related goods.

98. Goli's co-founder and President, Bitensky, was directly involved in the selection and creation of the GOLI trademark and also directs, authorizes and approves Goli's marketing strategy and use of the Goli Mark.

99. At the time that Goli (and Bitensky) chose the "Goli" name, Goli employees were aware that GOLO existed and that it was a company that offered weight loss products, but Goli proceeded anyway.

H. DEFENDANTS' FALSE AND MISLEADING STATEMENTS

100. Defendants have leveraged consumers' desire for weight loss, immune system support, and overall improved health by making false statements about the nature, characteristics, and/or qualities of Goli's products, and thereby have deceived, or at least have a tendency to deceive, a substantial portion of the intended audience (namely, consumers interested in products that support weight management, immunity, and overall health and wellness).

101. Defendants have made false and/or misleading statements regarding the nature, characteristics, and/or properties of Goli's products through Goli's website, in social media and

other media outlets, and on product packaging and other promotional materials as described herein, and have done so knowing that the statements were false and/or misleading and that they would be disseminated to consumers.

102. Goli and Bitensky have alternatively made false and/or misleading statements regarding the nature, characteristics, and/or properties of Goli's products through brand partnerships with media outlets, referral sources, direct advertisers and advertisements, and/or social media influencers who have repeated the false and/or misleading statements made by Goli and Bitensky, which they knew would be disseminated to consumers and actively and materially furthered the unlawful conduct by inducing it, causing it, and bringing it about.

103. Bitensky is personally liable for Goli's infringing use of the GOLLI trademark and for all false and/or misleading statements regarding the nature, characteristics, and/or properties of Goli's products because, as Goli's President and Chief Executive Officer, he was involved in the selection and creation of the GOLLI trademark, authorizes and directs the company's use of the GOLLI trademark, and has authorized and directed the false and/or misleading statements described herein, and in many instances directly made the false statements himself. And upon information and belief, he has done so all the while knowing them to be false and/or misleading.

104. Defendants are working in concert with each other to convey the false and/or misleading statements described herein to consumers in order to persuade them to buy Goli's products.

Two ACV Gummies Are Not Equal to a "Shot" of ACV

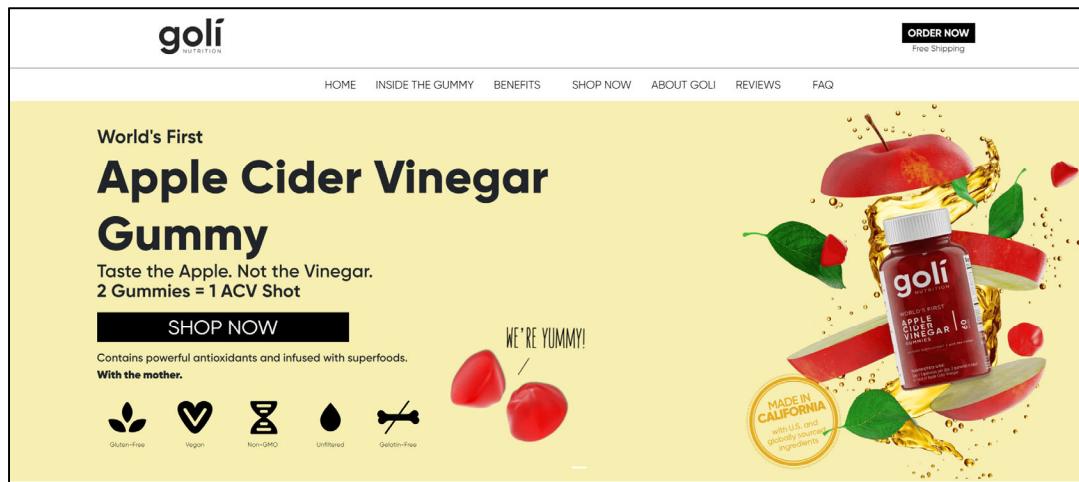
105. Defendants represent that the ACV Gummies are equivalent to, have the same characteristics as, and provide the same benefits as liquid apple cider vinegar. Defendants' advertising states that ACV Gummies provide "ALL OF THE AGE OLD BENEFITS OF

TRADITIONAL ACV.” Traditional apple cider vinegar is intended to mean liquid apple cider vinegar.

106. Goli’s ACV Gummies do not contain any real liquid ACV, but rather, a starchy form of powder ACV that does not contain the amount of acetic acid (the active ingredient in real liquid ACV) that liquid ACV contains. The ACV Gummies bear so little resemblance to liquid ACV, in both their composition and associated benefits, they should not even be called “ACV” Gummies.

107. More specifically, each of the Defendants represents and/or has represented directly and/or indirectly that two ACV Gummies equal one shot of liquid ACV.

108. For example, the banner at the top of the home page of Goli’s website (www.goli.com) displayed a banner (like that shown below) stating “2 Gummies = 1 ACV Shot” until at least as recently as September 1, 2021.



109. Since at least as early as August 2019, the label on Goli’s ACV Gummies bottle (shown at the right of the screenshot above) likewise included the claim that “2 gummies is equal to 1 shot of Apple Cider Vinegar” (the “**2=1 Claim**”):



110. The label on the ACV Gummies bottle shown for sale on Amazon as of March 12, 2021 likewise included the claim that that “2 gummies is equal to 1 shot of Apple Cider Vinegar”:

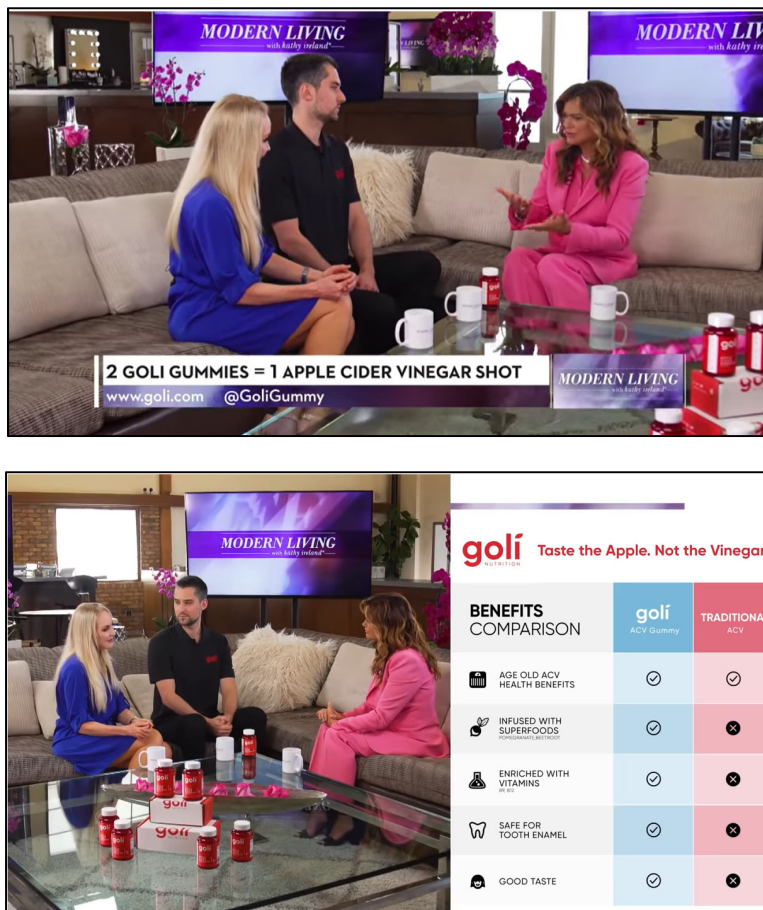


111. On information and belief, as of May 18, 2020, all bottles of Goli's ACV Gummies distributed by Goli included the 2=1 Claim. At some point after May 18, 2020, Goli began selling its ACV Gummies in bottles that do not include the 2=1 Claim.

112. Goli also updated its website to remove some references to the 2=1 Claim, and updated its “Frequently Asked Questions” page to state (at least as of August 25, 2021) “[t]wo Goli ACV Gummies provides slightly more than one recommended tablespoon of apple cider

vinegar,”²³ before deleting this question and answer entirely from its site sometime prior to September 17, 2021.

113. Goli’s false 2=1 Claim has been included prominently in other Goli-sponsored advertising material as well, including a 2019 spot in which a member of Goli’s Nutritional Advisory Board (Heidi Regenass) promoted Goli’s ACV Gummies as offering “the benefits of apple cider vinegar” on the show “Modern Living with Kathy Ireland,” as shown in the screenshots below:²⁴



²³ See <https://goli.com/pages/faq> (last accessed Aug. 25, 2021).

²⁴ See <https://www.youtube.com/watch?v=viJeXcfxSMY> (last accessed Aug. 19, 2021).

114. While the banner reading “2 GOLI GUMMIES = 1 APPLE CIDER VINEGAR SHOT” appeared across the screen, Regenass stated that, as a holistic medicine doctor, she recommended taking 2 tablespoons of apple cider vinegar a day, which is the equivalent of two to four ACV Gummies a day.

115. Defendants’ 2=1 Claim is false, misleading, and likely to confuse consumers.

116. And, on information and belief, Defendants know that the 2=1 Claim is false, misleading, and likely to confuse consumers or, at least, have made the statement knowing that they have no basis to make it. On information and belief, Defendants do not have a study that supports its claim that two ACV Gummies are equivalent to one “shot” of apple cider vinegar or any similar claim. The 2=1 Claim, and any similar claims equating Goli’s ACV Gummies with apple cider vinegar, are not supported by competent and reliable scientific evidence.

117. Goli’s website represented (at least as late as August 18, 2021), in response to the question “What are the Supplement Facts?” (www.goli.com/pages/faq), that each Goli gummy has 500 mg of apple cider vinegar, and that 5% of the apple cider vinegar in each ACV Gummy is acetic acid, as shown below:

What are the Supplement Facts?	
1 gummy	
Servings per container: 60	
Calories per serving: 15	
Total Carbohydrates: 3.5 g (1% Daily Value)	
Total Sugars: 1g (2% Daily Value)	
Apple Cider Vinegar: (5% Acetic Acid) 500 mg *	
Organic Beetroot: 40 mcg *	
Organic Pomegranate: 40 mcg *	
Vitamin B9 (Folic Acid): 200 mcg DFE// 120 mcg Folic Acid (50% Daily Value)	
Vitamin B12 (Cyanocobalamin): 1.2 mcg (50% Daily Value)	
* Daily Value Not Established	

118. The label on bottles of Goli's ACV Gummies also claims that there is 500 mg of apple cider vinegar in each ACV Gummy and 5% of the 500 mg is acetic acid:

SUGGESTED USE:
1-2 gummies up to 3 times daily (enjoy up to 6 gummies a day).

Supplement Facts		
Serving Size 1 Gummy Servings Per Container 60		
Amount Per Gummy		%DV
Calories	15	
Total Carbohydrate	4 g	1%*
Total Sugars	1 g	†
Includes 1 g Added Sugars		2%*
Folate (Folic Acid)	200 mcg DFE (120 mcg folic acid)	50%*
Vitamin B12 (Cyanocobalamin)	1.2 mcg	50%*
Apple Cider Vinegar (5% Acetic Acid)	500 mg	†

*Percent Daily Values (DV) are based on a 2,000 calorie diet.
†Daily Value (DV) not established.

Other Ingredients: Organic Cane Sugar, Organic Tapioca, Water, Pectin, Sodium Citrate Dihydrate, Citric Acid, Malic Acid, Natural Apple Flavor, Organic Carrot (for color), Organic Apple (for color), Organic Black Currant (for color), Organic Beet Root, Organic Pomegranate.

Does NOT contain: yeast, wheat, milk, eggs, gluten, soy, gelatin, peanuts, shellfish, dairy, artificial sweetener, artificial colors, artificial flavors, agave, artificial preservatives and salicylates.

Certified organic by: Oregon Tilth

This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

119. 5% of 500 mg is 25 mg.

120. Defendants thus represent that there are 25 mg of acetic acid in each ACV Gummy and 50 mg of acetic acid in two ACV Gummies.

121. On information and belief, consumers reasonably understand one “shot” of liquid apple cider vinegar to be equal to at least two tablespoons, or 30 mL.

122. Goli, however, has contended that one “shot” of liquid apple cider vinegar is equal to only one tablespoon, or 15 mL, as shown in the below excerpts from the “FAQs” on Goli’s website which appeared on Goli’s website at least as recently as August 25, 2021²⁵:

²⁵ See <https://goli.com/pages/faq> (last accessed Aug. 25, 2021).

How does Goli Gummy dosage compare to traditional apple cider vinegar?



Two Goli gummies provides slightly more than the one tablespoon of the recommended dose of Apple Cider Vinegar. Two to six Goli gummies daily, will provide the dosage of Apple Cider Vinegar that has been shown effective in clinical trials. Note: the liquid form of Apple Cider Vinegar is 94% water; our form is concentrated.

How does Goli ACV Gummies dosage compare to traditional apple cider vinegar?



Two Goli ACV Gummies provides slightly more than the one recommended tablespoon of apple cider vinegar.

123. Regardless, whether a “shot” is 30 mL (as GOLO alleges) or 15 mL (as Goli represents), Goli’s ACV Gummies contain far less than the claimed amount of apple cider vinegar.

124. Even using Goli’s incorrect definition of a “shot,” for the Defendants’ 2=1 Claim to be accurate, two ACV Gummies must contain 750 mg of acetic acid.²⁶

125. But according to Goli’s nutrition information, two ACV Gummies have only 1000 mg of apple cider vinegar (5% acetic acid). This equates to 50 mg acetic acid in two ACV Gummies.²⁷

²⁶ 15 mL of liquid apple cider vinegar is equal to 15000 mg of apple cider vinegar. Apple cider vinegar is considered to contain approximately 5% acetic acid. 5% of 15000 mg is 750 mg.

²⁷ The ACV Gummy nutrition information states that each gummy contains 500 mg of ACV with 5% acetic acid. 5% of 500mg is 25mg. Thus, two ACV Gummies would contain 50mg of acetic acid.

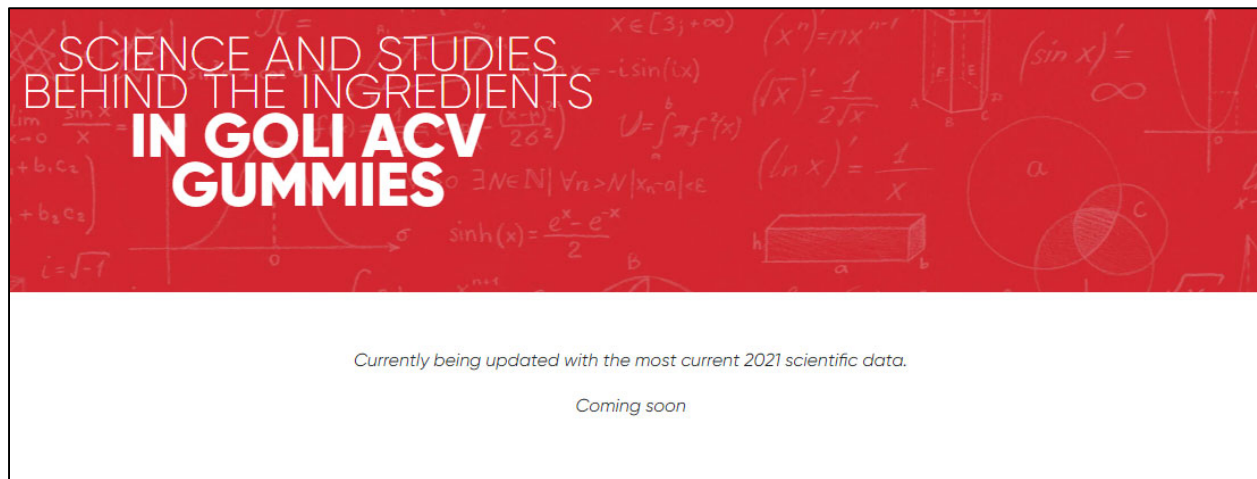
126. Accordingly, an individual who wants to ingest 750 mg of acetic acid would have to ingest *thirty ACV Gummies (each having 25 mg of acetic acid), not two ACV Gummies, to do so.*

127. If, as GOLO alleges, reasonable consumers would interpret a “shot” of liquid apple cider vinegar to be 30 mL, then an individual who wants to ingest the equivalent amount of apple cider vinegar would have to eat *sixty ACV Gummies (which would have 900 calories), not two ACV Gummies.*

128. An analysis of the actual chemical composition of Goli’s ACV Gummies performed by the Eurofins Microbiology Laboratories (“**Eurofins**”) in August 2020 confirmed that two ACV Gummies do not include the 750 mg of acetic acid that would be contained in one liquid apple cider vinegar tablespoon (or “shot” as misleadingly defined by Goli). In fact, that analysis showed that one ACV Gummy contains only 15.23 mg of acetic acid. Thus, two ACV Gummies do not even contain the amount of acetic acid (50 mg) that would be expected based on the ingredients disclosed on the product’s label and Goli’s website, much less the amount in one liquid shot of apple cider vinegar.

129. Defendants, and each of them, knew, or should have known, that the 2=1 Claim (and any similar claim that the ACV Gummies provide the same benefits as apple cider vinegar) is false and/or misleading and that they did not have any basis to make the 2=1 Claim. And there is no basis for the claim, which is demonstrably false, as discussed above. Indeed, none of the “studies” cited previously on the Goli website as the supposed “studies and science” behind Goli’s ACV Gummies involves apple cider vinegar in a powder form or gummies, much less Goli’s ACV Gummies. And currently on Goli’s website, the page dedicated to Goli’s supposed

scientific support for its Gummies merely states “[c]urrently being updated with the most current 2021 scientific data. Coming soon”²⁸:



130. Defendants simply made up the claim to confuse and deceive the public and leverage consumers’ desire to find easier ways to lose weight and be healthier, so that Defendants could be more profitable, attract a network of affiliates to promulgate Goli’s viral marketing campaign, and capture market share from competitors.

Goli’s ACV Gummies Do Not Contain 500 mg of ACV

131. Defendants’ representation that an ACV Gummy contains 500 mg of apple cider vinegar that is 5% acetic acid (the “**500 mg Claim**”) is likewise false, as confirmed by the testing done by the Eurofins lab. If one ACV Gummy contained 500 mg of apple cider vinegar with 5% acetic acid, an ACV Gummy would contain 25 mg of acetic acid, not 15.23 mg as confirmed by testing.

132. Defendants knew, or should have known, that Goli’s claim that its ACV Gummies contained 500 mg of apple cider vinegar with 5% acetic acid is false and/or misleading and that they did not have any basis to make the 500 mg Claim. They have made up claims, like the 500

²⁸ See <https://goli.com/pages/science-and-studies-behind-goli> (last accessed Sept. 16, 2021).

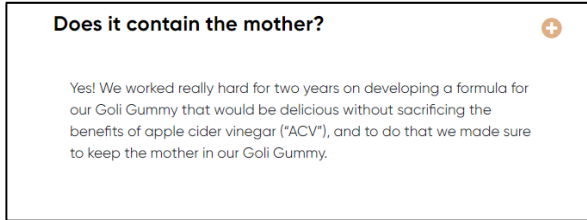
mg Claim, to deceive the public and leverage consumers' desire to find easier ways to lose weight and be healthier, so that Defendants could be more profitable, attract a network of affiliates to promulgate Goli's viral marketing campaign, and capture market share from competitors.

Goli's ACV Gummies Do Not Contain "The Mother"

133. Defendants' false advertising is not limited to their 2=1 and 500mg Claims. Since at least as early as September 2019, Defendants have falsely stated that Goli's ACV Gummies provide all the health benefits of liquid apple cider vinegar, such as weight loss, and include "the mother" found in unfiltered liquid apple cider vinegar (the "**Mother Claim**"). Goli defines "the mother" as "a combination of beneficial yeast, enzymes and healthy bacteria."²⁹ But just as Goli's ACV Gummies do not contain the amount of acetic acid that traditional ACV contains (or even the amount of acetic acid claimed on the ACV Gummy product packaging), Goli's ACV Gummies do ***not*** contain the coveted "mother."

134. Defendants' false statement that the ACV Gummies contain "the mother" appeared on the product label, Goli's website, and in other advertising, including sponsored ads posted by Goli affiliates on social media and other types of media. Examples of the claim are below:

²⁹ See <https://goli.com/pages/inside-the-gummy> (last accessed March 14, 2021).



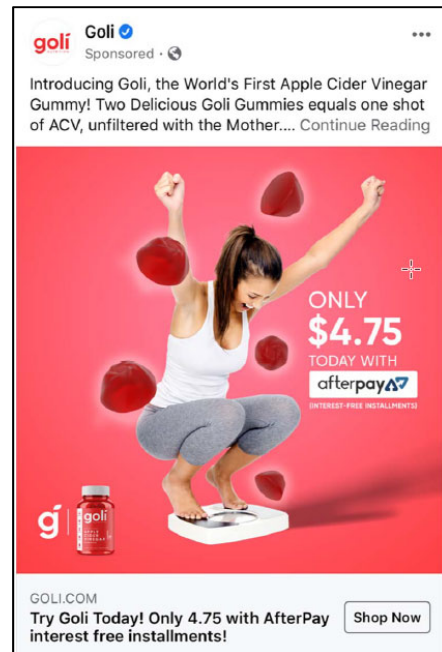
<https://goli.com/pages/faq> (last accessed March 12, 2021).



www.goli.com (last accessed March 14, 2021).



Front panel of product label for Goli ACV Gummies as of October 2020.



Sponsored Advertisement appearing on Facebook, September 2020.

135. Between March and August 2021, Goli updated its “Frequently Asked Questions” page to state that the “Apple Cider Vinegar ingredient” that they use “contains the mother at the time of manufacturing,” in an attempt to continue tying its product to the health benefits of the “mother” even though it knows that the mother does not survive the manufacturing process.³⁰

³⁰ See <https://goli.com/pages/faq> (last accessed Aug. 25, 2021).

136. Goli, through Regenass, also falsely touted that the ACV Gummies contain “the mother” on the November 2019 episode of “Modern Living with Kathy Ireland” discussed in ¶ 113, *supra*. During that appearance, during a discussion about the ACV Gummies, Regenass described what the “mother” is. During her explanation, displayed across the screen appeared bottles of apple cider vinegar with the “mother” in them and on the bottom of the screen, the ACV Gummies were overlaid, suggesting that the ACV Gummies contain the “mother”:



137. Like Defendants’ 2=1 Claim, their representation that Goli’s ACV Gummies contain “the mother” is literally and demonstrably false because the “mother” is not contained in the ACV Gummies.

138. An analysis performed by the Eurofins lab in July 2020 confirmed that Defendants’ Mother Claim is false. The lab’s analysis of the ACV Gummies found no live bacteria (which could be the only kind of “healthy” bacteria) in the ACV Gummies. Thus, ACV Gummies do not contain “the mother” as claimed by Defendants. This is not surprising since the bacteria contained in “the mother” would not be expected to survive the manufacturing process through which a product becomes a “gummy.” Indeed, Goli’s change to its website to obfuscate

whether the final gummy contains the “mother” reflects Goli’s knowledge that the “mother” does not survive the manufacturing process. *See* ¶¶ 134–35, *supra*.

139. Defendants, and each of them, knew, or should have known, that Goli’s claim that its ACV Gummies contain “the mother” is false and/or misleading and that they did not have any basis to make the Mother Claim. Defendants simply made up the claim to confuse and deceive the public and leverage consumers’ desire to find easier ways to lose weight and be healthier, so that Defendants could be more profitable, attract a network of affiliates to promulgate Goli’s viral marketing campaign, and capture market share from its competitors.

Defendants Misrepresent the Ingredients in Goli’s Ashwa Gummies

140. Defendants also misrepresent the strength and/or potency of Goli’s Ashwa Gummies.

141. On Goli’s website, Defendants touted the Ashwa Gummies as the “World’s Most Powerful Ashwagandha Gummies,” which contain KSM-66 Ashwagandha, the “highest concentration” ashwagandha extract available “on the market today,” as shown in the images below (the “**Ashwa Concentration Claim**”):³¹

³¹ *See* <https://goli.com/pages/home-ashwagandha> (last accessed March 14, 2021); <https://goli.com/pages/faq-ashwagandha> (last accessed September 17, 2021).

Introducing


ASHWA


WORLD'S MOST POWERFUL
ASHWAGANDHA GUMMIES


Keep Calm
and De-Stress.


SHOP NOW


Delicious, effective, and highly bioavailable. **Made with KSM-66® Ashwagandha & Vitamin D.**


 **Gluten-Free**

 **Non-GMO**

 **Plant-Based**

 **Vegan**

 **Clinically Proven KSM-66®**



MADE IN CALIFORNIA with U.S. and globally sourced ingredients.

INGREDIENTS

KSM-66® Ashwagandha

The ancient Indian herb ashwagandha (*Withania Somnifera*) has been revered for its medicinal qualities for over 5,000 years and is rooted in Ayurveda. Ayurveda, a holistic and natural system of medicine, is based on the concept that health and wellness depend on a balance between physical and mental health by leveraging natural medicine.

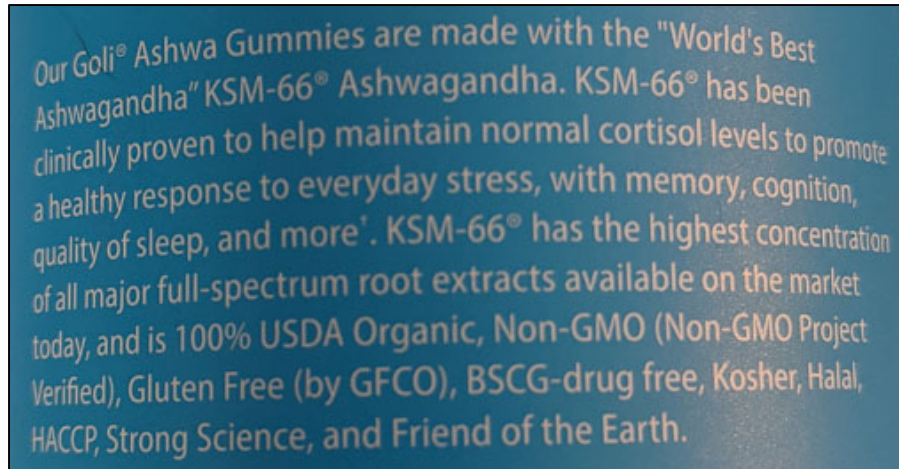
Ashwagandha is also an adaptogen—a plant that helps the body maintain balance and adjust to stress. This function of Ashwagandha is well-documented and heavily backed by modern science.

KSM-66® is the highest concentration ashwagandha extract on the market and has the most extensive set of research behind it supporting various health benefits.

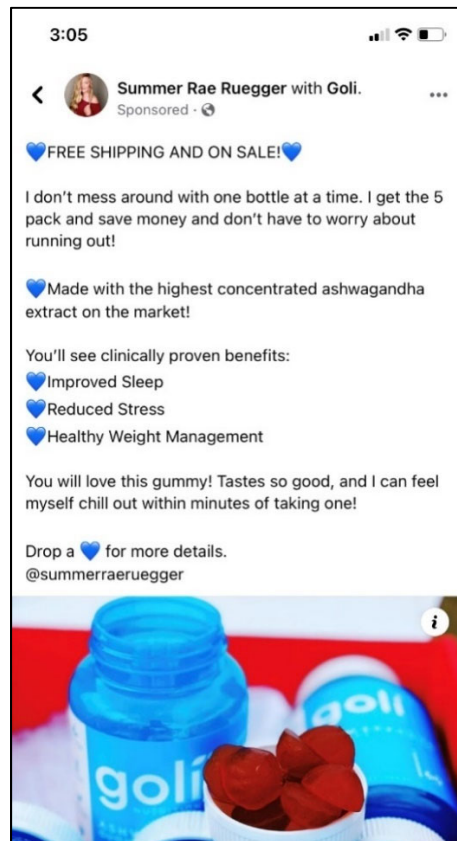
How does KSM-66® Ashwagandha compare with traditional Ashwagandha?

KSM-66® is the highest concentration Ashwagandha extract on the market and has the most extensive set of research behind it supporting an array of benefits that are clinically proven.

142. Similar statements appear on the label of the Ashwa Gummies, as shown below:



143. Likewise, Goli's affiliates parrot the same claims in sponsored ads on social media, like the one below, which appeared on Facebook in March 2021 and claims that the Ashwa Gummies contain "the highest concentrated ashwagandha extract on the market":



144. Defendants also claim that Goli's Ashwa Gummies are vegan (*see, e.g.,* the image in ¶ 141 and on the Ashwa Gummies label below):



145. According to the manufacturer of KSM-66 Ashwagandha, a company named Ixoreal Biomed, its “extraction process entails pre-treating the ashwagandha roots with milk” and thus, its most highly concentrated ashwagandha “contains milk constituents.” Ixoreal also offers a version of its KSM-66 Ashwagandha that skips the milk pre-treatment (for those wanting a vegan or dairy-free product). Ixoreal notes that the *milk pre-treatment* “is important in [the KSM-66] extraction process because *this is in fact what leads to* retention of both hydrophilic components and lipophilic components of the raw root, which in turn leads to *a full-spectrum extract of such high-potency*.”³²

146. If Goli’s Ashwa Gummies contain KSM-66 Ashwagandha that was pre-treated in milk, then Defendants’ claim that the product is vegan is false (and the Ashwa Gummies label

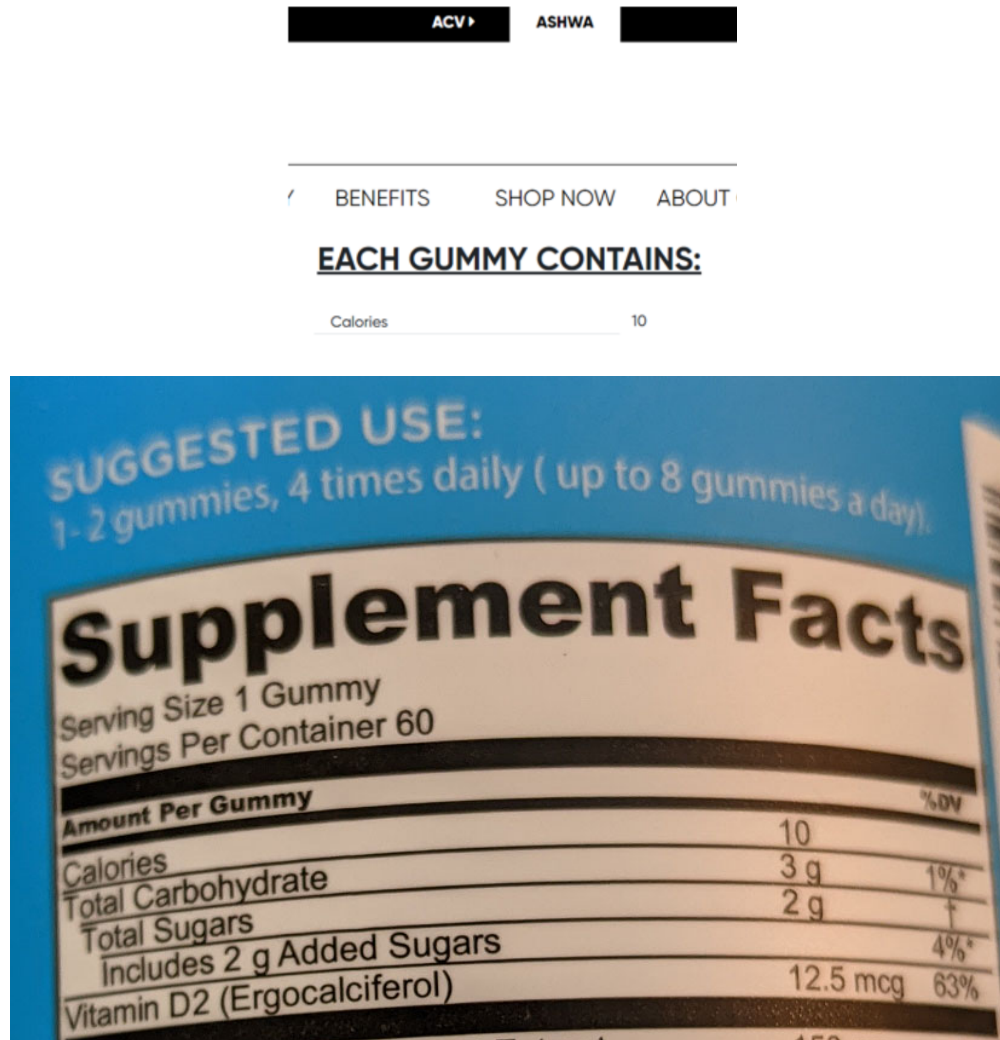
³² See <https://ksm66ashwagandhaa.com/ksm-66/what-is-ksm-66/> (last accessed Aug. 11, 2021).

should include a warning about the potential dairy allergen, which it does not). And if Goli's Ashwa Gummies instead contain Ixoreal's alternative vegan, dairy-free version of its KSM-66 Ashwagandha, which skips the milk pre-treatment—which is what leads to an ashwagandha extract of such high potency—then Goli's Ashwa Gummies do *not* contain the highest concentration ashwagandha extract on the market. Thus, the Ashwa Concentration Claim that Goli's Ashwa Gummies are both vegan and contain the highest concentration of ashwagandha extract on the market is false and misleading.

147. Defendants knew, or should have known of the falsity of their claim that Goli's Ashwa Gummies are both vegan and contain the highest concentration of ashwagandha extract on the market because both cannot be true. Defendants knew they did not have any basis to make the Ashwa Concentration Claim. Defendants simply made up the claim to confuse and deceive the public and leverage consumers' desire to find easier ways to lose weight and be healthier, so that Defendants could be more profitable, attract a network of affiliates to promulgate Goli's viral marketing campaign, and capture market share from competitors.

Ashwa Gummies Contain More Calories than Claimed

148. As noted in Section E, *supra*, Goli touts the weight management benefits of its Ashwa Gummies. At the same time, however, Defendants claim that the Ashwa Gummies contain fewer calories than they actually do. As shown below, through at least March 2021, both Goli's website and the Ashwa Gummies label represented that each Ashwa Gummy contained only ten calories (the "**Calorie Claim**"):



149. Goli's claim that one serving of its Ashwa Gummies (or one gummy) contains just ten calories is false. As confirmed by laboratory testing by Eurofins in February 2021, each Ashwa Gummy actually contains 15 calories, 50% more than disclosed by Defendants. Thus, the Calorie Claim is false, misleading, and likely to confuse consumers.

150. The calorie count is a material one to consumers generally, but particularly to consumers looking for a product to help them lose weight.

151. Defendants knew, or should have known, that Goli's claim that one Ashwa Gummy contains just 10 calories is false. Defendants misrepresent the product's caloric content to confuse and deceive the public and leverage consumers' desire to find easier ways to lose

weight and be healthier, so that Goli could be more profitable, attract a network of affiliates to promulgate Goli's viral marketing campaign, and capture market share from competitors.

152. Evidencing Defendants' knowledge that the Calorie Claim is false, the packaging of the Ashwa Gummies was updated between March 2021 (when GOLO filed a false advertising claim against Goli in California regarding its Calorie Claim) and today to reflect an increase in the calorie content of the Ashwa Gummies, but still underrepresents the calorie content by 5 calories per serving:



Defendants' False and Misleading Claims That the Benefits of its Ashwa Gummies Are "Clinically Proven"

153. As discussed in Section E, *supra*, Defendants promise Goli's Ashwa Gummies deliver a swath of health benefits, far beyond the stress relieving and calming benefits traditionally associated with ashwagandha. And they do so alongside representations that these benefits are "clinically proven" (the "Clinically-Proven Claim"). However, Goli relies only on

studies supporting the benefits of the raw ingredient that has not gone through a destructive gummy manufacturing process.

154. Exemplary images from the Goli website and the Ashwa Gummies' packaging reflect the false and misleading suggestion that Goli's Ashwa Gummies are clinically proven to provide such benefits:³³

KSM-66® ASHWAGANDHA, PLUS VITAMIN D ARE CLINICALLY PROVEN TO HELP:

REDUCE STRESS	+	WEIGHT MANAGEMENT	+
QUALITY OF LIFE	+	QUALITY OF SLEEP	+
IMMUNE SYSTEM	+	PHYSICAL PERFORMANCE	+
MEMORY & CONCENTRATION	+	SEXUAL FUNCTION	+

KSM-66® Ashwagandha has been clinically proven to:


- Help reduce stress and tension
- Help promote memory and concentration
- Support endurance, strength, muscle size
- Improve sleep quality
- Support sexual function
- Reduce and maintain healthy body weight

³³ See <https://goli.com/pages/home-ashwagandha> (last accessed Aug. 19, 2021).

Our Goli® Ashwa Gummies are made with the "World's Best Ashwagandha" KSM-66® Ashwagandha. KSM-66® has been clinically proven to help maintain normal cortisol levels to promote a healthy response to everyday stress, with memory, cognition, quality of sleep, and more'. KSM-66® has the highest concentration of all major full-spectrum root extracts available on the market today, and is 100% USDA Organic, Non-GMO (Non-GMO Project Verified), Gluten Free (by GFCO), BSCG-drug free, Kosher, Halal, HACCP, Strong Science, and Friend of the Earth.

155. The Clinically-Proven Claim and similar claims suggesting that Goli's Ashwa Gummies have been shown to provide some or all of these benefits are also made in Goli-sponsored advertisements and Goli partner posts on social media, like those below:





Goli
Sponsored

🍷 Take home a FREE bottle of Goli or earn as much as 30% OFF! 🍷
 Only now our WHEEL OF FORTUNE is OPEN, so SPIN TO WIN BIG 🎰

Enjoy the benefits of Apple Cider Vinegar and Ashwagandha for FREE or for as little as \$13.35 per bottle! ⌚ Just don't be late! Offer ends at MIDNIGHT!

Every gummy contains vitamins, some of our favorite superfoods and tastes delicious!

❤️ Apple Cider Vinegar has been used for centuries to support:

- Appetite reduction
- Better digestion
- Reduced bloating

💙 On the other hand, Ashwagandha Gummies were made with KSM-66® Ashwagandha clinically proven to:

- Help Reduce Body Weight
- Help Reduce Stress
- Help Support Sexual Function

We're proud to say that our Goli Gummies have NO Artificial Sweeteners, Colors or Flavors. They're also Vegan, Gluten-free, and non-GMO! 🌱

Goli Gummies are a SURE BET!
 SPIN TO WIN NOW www.goli.com!

EVERYBODY WINS!

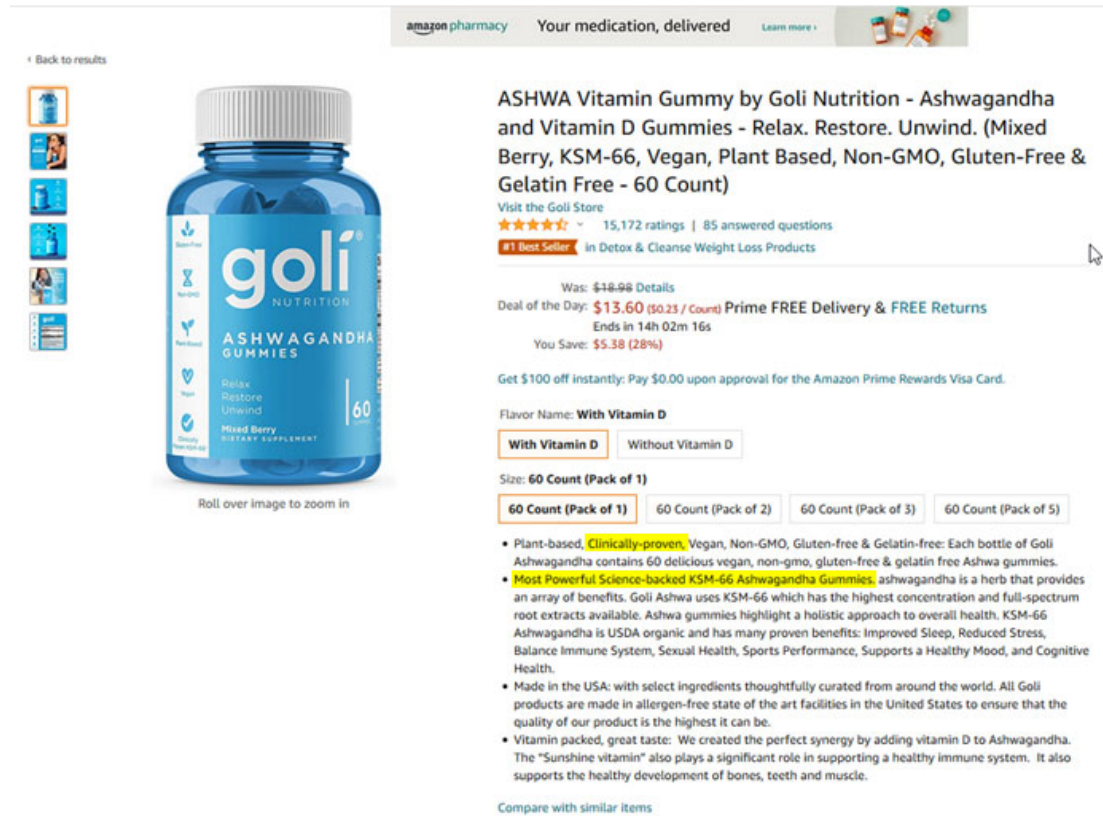
IT'S YOUR LUCKY DAY!
SPIN TO WIN
DISCOUNTS & FREE PRODUCTS!







156. Goli makes the Clinically-Proven Claim and a similar claim that its Ashwa Gummies are “science-backed” on its Amazon page:



157. On information and belief, Defendants do not have any study that supports the claim that the Ashwa Gummies provide the laundry list of benefits for which they are promoted and thus that claim is false and misleading. While the Goli website purported to share “THE STUDIES AND SCIENCE **BEHIND GOLI ASHWAGANDHA GUMMIES**,”³⁴ Goli does not cite a single study that involves an Ashwa Gummy (or any other gummy product for that matter). Instead, Goli misleadingly provides links to studies that relate to *different product formulations* ingested via *different delivery mechanisms*. As such, Defendants Goli and Bitensky’s

³⁴ See <https://goli.com/pages/science-and-studies-behind-ashwagandha> (last accessed March 14, 2021) (emphasis in original); see also <https://goli.com/pages/faq-ashwagandha> (last accessed March 14, 2021) (FAQ: “Do you have evidence for the benefits claims?” Answer: “Please see our page dedicated to the scientific studies behind the benefits here.”).

Clinically-Proven Claim and any similar claims are not supported by competent and reliable scientific evidence.

158. Even assuming, *arguendo*, that there is support for the claim that Ixoreal Biomed's KSM-66 Ashwagandha by itself provides the above-listed benefits, there is no competent and reliable scientific evidence from which to conclude that Goli's Ashwa Gummies, or any ashwagandha gummy, provide the same benefits, and certainly not a clinical study sufficient to support the Clinically-Proven Claim. It is well known that dietary supplements in gummy form are the hardest to manufacture while ensuring the amount of ingredients in each gummy is consistently as intended. For these reasons, gummies are the dietary supplement most likely to fail quality testing.

159. In short, despite representing that Goli's Ashwa Gummies are "Clinically Proven" to provide a myriad of benefits, Goli does not have any support for its Gummies, rendering its "clinically proven" claims false.

160. The Clinically-Proven Claim deceives or has a tendency to deceive a substantial portion of consumers into believing Goli's Ashwa Gummies have been clinically tested in studies that confirmed those benefits were true for that product formulation. Indeed, Defendants intentionally make the Clinically-Proven Claim (and similar claims) alongside claims that convey that Goli's studies and claims have scientific support and credibility, e.g., that Goli's Ashwa Gummies are "backed by modern science" and under the heading "THE STUDIES AND SCIENCE BEHIND GOLI ASHWAGANDHA GUMMIES," to mislead customers into believing that the Ashwa Gummies product itself is clinically proven to provide all the benefits that Goli promises, which is false.

161. Defendants knew, or should have known, that Goli's claim that the Clinically-Proven Claim and similar claims are false and/or misleading and that they did not have any basis to make such claims. Defendants simply made up the claim to confuse and deceive the public and leverage consumers' desire to find easier ways to lose weight and be healthier, so that Defendants could be more profitable, attract a network of affiliates to promulgate Goli's viral marketing campaign, and capture market share from competitors.

Defendants' False and Misleading "Organic" Claims

162. Defendants have also falsely claimed that the ACV Gummies are organic when in fact they only contain "select" organic ingredients (the "**Organic Claim**").

163. On information and belief, Defendants do not have any basis to claim that Goli's ACV Gummies are organic or 100% organic. Defendants' Organic Claim is not supported.

164. The press release announcing Goli's and Bitensky's launch of the ACV Gummies represented that the product is organic, as shown below³⁵:

Made in the USA, in an FDA-registered, cGMP-certified, Kosher and allergen-free facility, the Goli Gummy is proud to be a Parent Tested Parent Approved award winner. Goli Gummies are 100% organic, non-GMO, vegan, Kosher and gluten-free. They do not contain any preservatives, chemicals, corn-syrup, allergens, soy, dairy, wheat, salicylates, artificial ingredients, sweeteners, flavors or colors. Unlike most other health gummies that use gelatin (animal byproduct), the Goli Gummy is made with pectin (orange peel), making it ideal for absorption of the key essential nutrients. The Goli Gummy contains the benefits of ACV, which assist with the following:

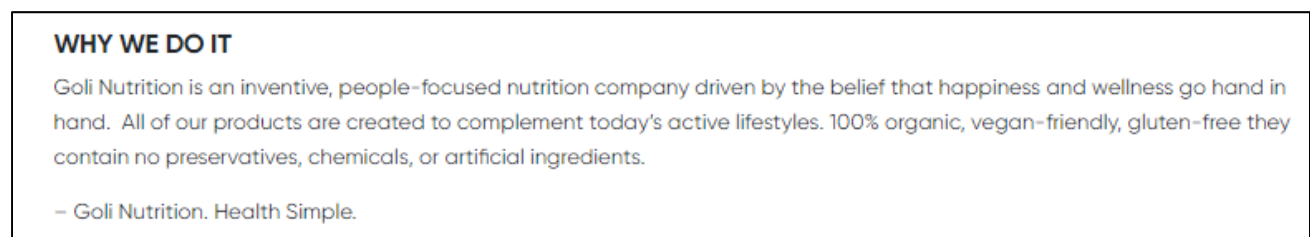
- Digestion
- Complexion
- Weight Reduction
- Body Detoxification
- Heart Health
- Energy Levels

³⁵ See <https://www.prnewswire.com/news-releases/goli-nutrition-launches-worlds-first-apple-cider-vinegar-gummy-300922883.html#:~:text=23%2C%202019%20%2FPRNewswire%2F%20%2D%2D,makes%20taking%20daily%20supplements%20enjoyable> (last accessed Aug. 19, 2021).

165. Likewise, beginning at least as early as September 2019, the Goli website and the bottle label for the ACV Gummies indicated the product was organic. For instance, the website included the organic logo prominently on the banner of the first page as shown below³⁶:



166. And the following language appeared on every page of Goli’s website, indicating that Goli’s ACV Gummies were “100% organic, vegan-friendly, gluten-free, [and] contain[ed] no preservatives, chemicals, or artificial ingredients”:



167. The label on a bottle of the ACV Gummies also indicated that the product was organic, and that it was “certified organic by Oregon Tilth,” as shown in the images below from the side panel and supplemental facts panel:

³⁶ See <http://web.archive.org/web/20191001090457/https://www.goli.com/> (reflecting website as it appeared on Oct. 1, 2019).



168. Goli also represented, through their spokesperson, Regeness, that the ACV Gummies are organic during 2019 spot on the show “Modern Living with Kathy Ireland” discussed above, as shown below:



169. As of May 14, 2020, Goli’s webpage continued to claim that its products were “Organic,” but no longer claimed that they were “100% organic.”³⁷

³⁷ See <http://web.archive.org/web/20200514020643/https://goli.com/> (reflecting the website as it appeared on May 14, 2020).

170. At some point between May and June 2020, references to Goli's ACV Gummies being "Organic" and/or "100% Organic" were removed from Goli's website. The "100% Organic" claim at the bottom of each web page was also changed to indicate that the ACV Gummies are instead made with "*select organic ingredients.*"

WHY WE DO IT

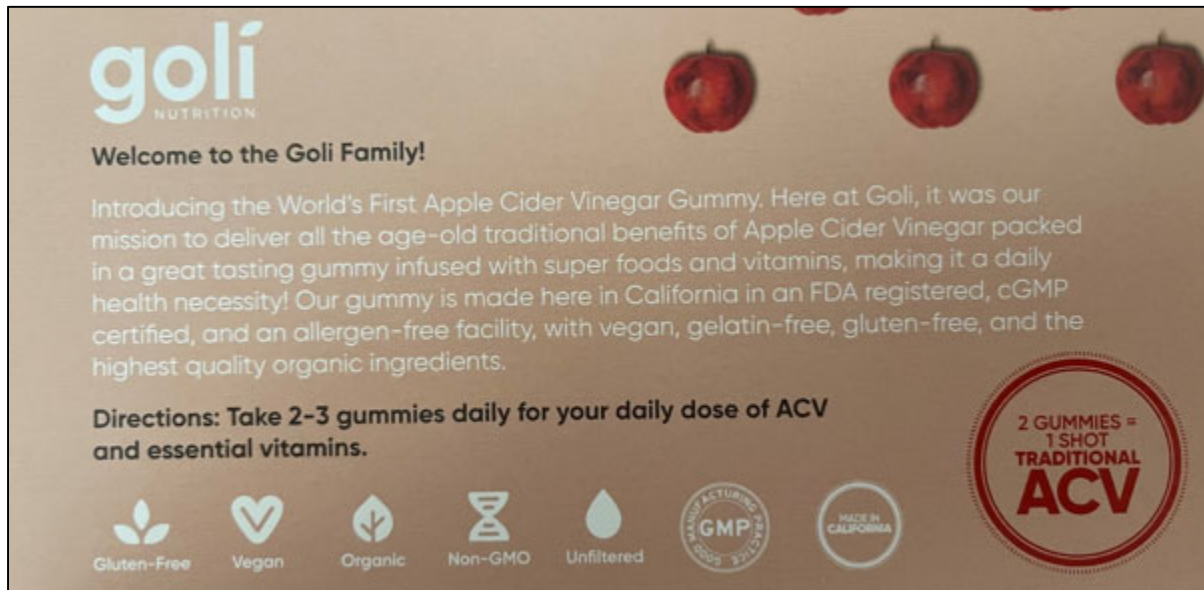
Goli Nutrition is an inventive, people focused nutrition company driven by the belief that happiness and wellness go hand in hand. Our goal was to create an easy, nutritious and delicious way for everyone to incorporate Apple Cider Vinegar into their daily routine. We are proud that our Goli Gummies are gluten-free, gelatin-free, vegan, non-GMO and made with select organic ingredients, free from artificial sweeteners and preservatives.

– Goli Nutrition. Health Simple.

171. References to the ACV Gummies being "organic" were also removed from the product label at some point prior to February 2021, including the representation that the product is "certified organic by Oregon Tilth," as shown below. But *none of the listed ingredients changed*, as can be seen by comparing the ingredient list below to that included in paragraph 167, *supra*.



172. Despite the changes to the website and product label, however, at least as recently as February 2021, the product inserts and outer carton with which Goli's ACV Gummies are shipped to consumers, still included the Organic Claim, as shown below:



173. And even within the last few weeks, Goli's paid affiliate marketers were still claiming the ACV Gummies are certified "organic," as shown in the posts below:

Sallyzgoli with Goli.
Sponsored · 🌐

🎄 Biggest @goligummy sale of the year! 30% off 3 and 5 bottle packages! 💖 Limited time only don't wait!

🍏 Goli gives you all benefits of apple cider vinegar in a much more pleasing way to take it!


Benefits Include

- 🍏 **Helps Reduce Appetite**
- 🍏 **Supports Weight Management**
- 🍏 **Improves Energy**


Goli has no artificial sweeteners, flavors or coloring, is vegan, gluten-free and **certified organic by Oregon Tilth.**

👉 Try them Today and Save 💰

#tistheseasonstobejolly #goligummy #applecidervinegar #acvbenefits #ad #nongmo #vegan #gluten-free #gelatinfree #unfiltered #golinitration



John Bellesi
1h · 🌐



Paula Bellesi
5h · 🌐

👉 Today Only! 🎁
GOLI SALE

- 🍏 Apple Cider Vinegar without the yuck. Two great tasting gummies are equal to one shot 🍏
- 🍏 Packed with Vitamin B & Superfoods
- 🍏 Great for digestion, weight control (helps with snacking) and energy!!

I've been taking two in the am and two in the afternoon for a while now and I've noticed a huge difference with digestion and my indigestion pains are few and far between.

🍏 Goli is **organic** vegan, gluten and gelatin free

Check out my link: <https://go.goli.com/bellesi>

#GoliNutrition #Ad
#ACVGummies #Tastetheapple


Holistic Tarra posted an offer.
Yesterday at 8:14 PM · 🌐

Saturday, August 21, 2021 at 8:14 PM : The worlds first apple cider vinegar gummy. Taste the apple! Not the vinegar.
They are actually delicious and great for you...

Weight loss, digestion, strengthens hair, nails and beautifies skin.

Organic
GMO Free
Vegetarian
Vegan
Kosher

Check out what else is for sale in August!



10% Off Goli ACV Gummies
Expires Aug 31, 2021

Save

Apple Cider Vinegar Gummy shared a post.
August 20 at 6:11 AM · 🌐

Goli.

The Secret To Overall Wellness !

Well, it's no secret the health benefits that surround apple cider vinegar are phenomenal. The only problem with ACV is the horrid taste...the vinegar !

Goli ACV Gummy not only has more benefits than apple cider vinegar but it is also delicious ! Tastes like apple 🍏 not the vinegar.

Goli Gummy is made with real apples and the mother AKA a beneficial probiotic.


All gummies are vegan, **organic**, gelatin and gluten free, unfiltered & raw.

Benefits of Goli ACV Gummy:

1. Supports a Healthy Digestion
2. Weight Control
3. Restores Complexion
4. Enhances Energy
5. Promotes a Healthy Heart

With every purchase, you provide a child in need with a 6-month dose of vitamins !

Now 25% off.
Use code "MYPA" during checkout and pay 25% less.
Try it 👉 <https://go.goli.com/myapa>



NOW 25% OFF

174. And in retail channels, Goli's Gummies continue to be marketed as organic³⁸:

PRODUCT DETAILS

Description

Goli Nutrition Apple Cider Vinegar Gummies 500 mg: Taste the Apple, Not the Vinegar

World's first Apple Cider Vinegar gummies. Goli Nutrition is an inventive, people focused nutrition company driven by the belief that happiness and wellness go hand in hand. The goal was to create an easy, nutritious and delicious way for everyone to incorporate Apple Cider Vinegar into their daily routine. These Apple Cider Vinegar Gummies produce the same age-old benefits of traditional Apple Cider Vinegar without the unpleasant taste!¹ Goli Gummies are Gluten Free, Non-GMO, Gelatin Free, and Vegan. Health Simple.

- World's first Apple Cider Vinegar Gummies
- Made with the mother
- Gluten free, vegan and organic
- Non-gmo and unfiltered
- 60 pieces

About This Item

We aim to show you accurate product information. Manufacturers, suppliers and others provide what you see here, and we have not verified it. [See our disclaimer](#)

Goli Nutrition is an inventive, people-focused nutrition company driven by the belief that happiness and wellness go hand in hand. All of our products are created to complement today's active lifestyles. 100% organic, vegan-friendly, gluten-free they contain no preservatives, chemicals, or artificial ingredients. We consider it our goal to help the world reach their lifestyle and nutrition goals by making smart and healthy supplements using only the best ingredients and superfoods! Apple Cider Vinegar is a popular superfood that comes with a great series of health benefits. From aiding digestion, detoxifying properties, improving skin and helping in weight loss, the probiotic features of ACV have turned it into a cult necessity for the wellness community.

- A VEGAN, ORGANIC, NON GMO, GLUTEN FREE & GELATINE FREE: Each bottle of Goli contains 60 delicious vegan, organic, non gmo, gluten free & gelatine free Apple Cider Vinegar gummies. Our formula will make Apple Cider Vinegar accessible to anyone and everyone
- BETTER DIGESTION, MORE ENERGY, CLEARER SKIN, DETOX: Relieve digestion issues, experience more energy, watch your skin clear up and feel as your body detoxes with Goli Gummies. Enjoy all of the benefits of Apple Cider Vinegar without the downsides of drinking it. Goli is an excellent and easy way to incorporate Apple Cider Vinegar into your daily routine.
- REAL APPLES, VITAMIN PACKED, GREAT TASTE: Made with real apples, beetroot and pomegranate, Goli Gummies are as delicious as they are good for you. Our vegan friendly formula is packed with Vitamin B12 and B9 that will help improve your mood, metabolism and much more.
- VITAMIN ANGELS: Goli wants to give back to the community and it's that by partnering with Vitamin Angels. For every bottle you purchase Goli donates a 6 months supply of vitamins to a child in order to fight malnutrition around the world.

175. The ACV Gummies are not certified organic by Oregon Tilth or by any other certifier, as confirmed by searches on both Oregon Tilth's website and the USDA's registry.

³⁸ See <https://www.gnc.com/apple-cider-vinegar/187900.html> (last accessed Aug. 22, 2021); <https://www.walmart.com/ip/Goli-Nutrition-Apple-Cider-Vinegar-Gummy-with-The-Mother-60-Count/464219312> (last accessed Aug. 22, 2021).

176. Defendants, and each of them, knew, or should have known, that Goli's claim that its ACV Gummies are organic is false and misleading and that they did not have any basis to make the Organic Claim. Defendants made the Organic Claim to confuse and deceive the public and leverage consumers' desire to find easier ways to lose weight and be healthier, so that Defendants could be more profitable, attract a network of affiliates to promulgate Goli's viral marketing campaign, and capture market share from competitors.

177. Hereinafter, the false and misleading statements set forth above, including (i) the 2=1 Claim, (ii) the 500 mg Claim, (iii) the Mother Claim, (iv) the Ashwa Concentration Claim, (v) the Calorie Claim, (vi) the Clinically-Proven Claim, and (vii) the Organic Claim may be collectively referred to as "Defendants' False and Misleading Claims."

I. DEFENDANTS' FALSE AND MISLEADING CLAIMS AND GOLI'S USE OF THE GOLI MARKS HAVE INJURED CONSUMERS AND GOLO.

178. Defendants' unlawful use of the GOLO Marks as described herein has resulted in actual consumer confusion in the marketplace. GOLO continues to be contacted by many consumers who have expressed their actual confusion caused by Goli's unauthorized use of the Goli Marks. For example:

- a) On January 24, 2020, an individual sent an email to GOLO advising that she purchased only one bottle of Goli Gummies for \$19.99 and questioning why she was sent another package for \$49.95.
- b) On March 23, 2020, an individual sent an email to GOLO saying that she ordered gummies as seen in the TV ad and questioning why she received capsules instead.
- c) On April 1, 2020, an individual sent an email to GOLO asking why she received capsules instead of gummies.

- d) On April 10, 2020, an individual sent an email to GOLO explaining that “I thought I was ordering Goli Gummies when I ordered GOLO.”
- e) On April 18, 2020, an individual sent an email to GOLO, complaining:
“I did not order golo. I ordered Goli.com, a red bottle. What is golo? What are you doing switching items?”
- f) On April 29, 2020, an individual sent an email to GOLO asking why she had not received her order yet. The subject line of the email was “My Goli order.”
- g) On May 9, 2020, an individual sent an email to GOLO complaining: “I thought I had ordered the gummy’s [sic] that you advertised, not some pills. Probably won’t buy from you again.”
- h) On July 27, 2020, an individual called GOLO about his purchase from GOLO, confused why he did not receive the ACV Gummies that were advertised to him on Facebook.
- i) On August 10, 2020, an individual reported trying to order GOLO’s product, but was directed to Goli’s website and was misled to believe that GOLO had changed its name to Goli.
- j) On February 1, 2021, an individual called GOLO inquiring about charges on her bank statement from Goli.
- k) On February 2, 2021, an individual e-mailed GOLO asking where their shipment of gummies was.
- l) On March 10, 2021, an individual called GOLO explaining that she mistakenly ordered Goli when she wanted GOLO, but could not reach Goli’s customer service for a refund or cancellation of her subscription.

- m) On March 30, 2021, an individual e-mailed GOLO complaining that he was taking gummies three times a day but had gained weight. After clarification that GOLO did not sell gummies, the individual requested the link for GOLO's supplement.
- n) On May 16, 2021, an individual sent an e-mail with the subject "Gummies" asking how much apple cider vinegar was in each gummy and how many gummies to take for "the desired effect."
- o) On June 6, 2021, an individual commented on GOLO's Facebook page asking when to take "the blue bottle" supplements (presumably referring to Goli's Ashwa product). The same day, another individual e-mailed:

"would like to order gummies."

179. On information and belief, Defendants also received evidence of actual confusion caused by their use of the Goli Marks. For example, on April 18, 2020, an individual who had placed an order with GOLO wanted to cancel her order. She wrote: "Please cancel this order, DO NOT Ship or charge. Thank you!" She sent her cancellation request not to GOLO, but to Goli. Goli's customer service representative responded:

Upon careful review, I can see that you are emailing in regards to your order with Golo. Please note that you have contacted the customer support team for Goli Nutrition.

Goli's customer service representative copied GOLO on the email. This exchange not only constitutes another instance of actual confusion, but also establishes that Defendants have known, at least since April 18, 2020, that their use of Goli creates actual confusion.

180. In addition, GOLO's customer service department has received numerous phone calls – including within the last 30 days – from individuals expressing confusion from Defendants' use of the Goli Marks. GOLO has had to spend time, money, and effort correcting

their confusion and ensuring that GOLO's separate identity and superior reputation remain intact.

181. Defendants' continued use of the Goli Marks is likely to cause additional confusion as to the source and origin of the Defendants' goods and services and is likely to cause, and has caused, confusion, mistake, or deception as to the source or sponsorship of Defendants' goods and services. Further, Defendants' use of the Goli Marks falsely suggests a connection with GOLO, and misleads the public into believing that Defendants' goods and services emanate from, are approved or sponsored by, or are in some way connected with GOLO.

182. Defendants' use of the Goli Marks on packaging and other advertising in connection with the same goods falsely conveys that GOLO is affiliated with Defendants or otherwise misrepresents the nature, characteristics, and qualities of Defendants' goods and services. Defendants' use of the Goli Marks has actually deceived a substantial segment of the audience.

183. Current and prospective customers looking for GOLO's Goods and Services and encountering the Goli Marks are likely to be, and have already been, confused or deceived as to the source of the goods.

184. Defendants have undertaken the acts alleged herein without GOLO's permission or authorization and have caused, and if not stopped will continue to cause, consumer confusion, mistake, and/or deception.

185. On information and belief, Defendants' adopted and use the infringing Goli Marks in a deliberate, willful, and intentional attempt to trade unlawfully on the goodwill associated with the GOLO Mark.

186. Defendants' activities as described herein have caused, and if not stopped will continue to cause, irreparable harm, and significant injury to GOLO. The irreparable harm to GOLO is aggravated because consumers are likely to attribute to Plaintiff the literally false and/or misleading advertising claims Defendants make about the ACV and Ashwa Gummies (discussed below), further damaging GOLO's reputation and goodwill in its GOLO Mark.

187. Defendants use the Goli Marks to prominently advertise the alleged health benefits and attributes of Goli's products to deceive consumers into buying them, and Defendants' False and Misleading Claims about those health benefits and attributes have at least the tendency to deceive a substantial portion of the intended audience. Defendants' false advertising about the health benefits and attributes of Goli ACV and Ashwa Gummies goes to the efficacy and inherent qualities and characteristics of the ACV and Ashwa Gummies; namely, their supposed ability to deliver a swath of health benefits by doing nothing more than enjoying tasty gummies.

188. Defendants' False and Misleading Claims involve health issues that would concern reasonable consumers, and are thus presumptively material. Indeed, Defendants' False and Misleading Claims relate to the very health benefits for which Goli's ACV and Ashwa Gummies are marketed and sold, and thus were (and are) material to consumers' purchasing decisions.

189. Consumers who are actual and potential consumers of dietary supplements that provide weight management and related health benefits are and have been misled by Defendants' False and Misleading Claims. Given the importance of Defendants' False and Misleading Claims, consumers likely would not have chosen Goli's ACV and Ashwa Gummies had they

known the truth of Defendants' claims and would have opted for another weight management alternative, such as GOLO's Goods and Services.

190. Additionally, if the true facts were known, Goli would not have been able to achieve the media attention and significant advertising that it did. Goli would not then have been able to obtain the market share it holds in the weight management supplement market absent its widespread false and misleading advertising.

191. The injuries to consumers discussed above are the types of injury that consumers could not have reasonably avoided since they were unaware that the statements Defendants made about the Goli ACV and Ashwa Gummies were false and misleading. Defendants overpromised and under delivered, giving consumers less than what was promised and potentially putting consumers (who understandably thought they were ingesting something that would provide particular health benefits) in danger as a result.

192. Without injunctive relief from this Court, consumers will continue to suffer injuries, including a threat to their health and safety. When a company says that its products provide health benefits and reduce risk factors for serious health conditions, consumers need to be able to rely on those promises.

193. Through Defendants' False and Misleading Claims, Defendants have also diverted consumers (and sales) away from competitors (including GOLO) to Goli. Because Goli and GOLO compete for the same customers looking for the same weight management, appetite control, and other health benefits (*see* ¶¶ 50–83, *supra*), Defendants' False and Misleading Claims promising those benefits by merely popping a couple of gummies or chocolate bites each day have diverted consumers away from competitors like GOLO to Goli. Everyone is looking for easier routes to weight management and better health, and Goli seizes on that desire by

offering an inexpensive bottle of tasty gummies or chocolates falsely promising those benefits. GOLO's alternative is at an immediate disadvantage (even though it is a proven plan that offers long-term benefits). GOLO has lost sales and is likely to continue to lose sales to Goli because of Defendants' False and Misleading Claims. Indeed, GOLO regularly hears from consumers who have purchased Goli's products intending to purchase GOLO's Release supplement:

- a) On August 28, 2020, an individual called GOLO to cancel an order of "gummies," indicating that she meant to order the Release supplement instead.
- b) On September 14, 2020, an individual called to report that she had accidentally ordered from Goli when she meant to order from GOLO.
- c) On October 1, 2020, an individual called to report that she meant to order GOLO, but that she ordered Goli's ACV Gummies by mistake because her search results for "GOLO" returned results for Goli's products.
- d) On January 14, 2021, an individual called indicating that she received ACV Gummies when she believed she had ordered GOLO's Release supplement.
- e) On March 30, 2021, an individual e-mailed GOLO complaining about weight gain from eating "gummies." On clarification that GOLO does not sell gummies, the individual requested the link for GOLO's product.
- f) On April 13, 2021, an individual called indicating that she accidentally ordered Goli thinking that it was GOLO.
- g) On June 8, 2021, an individual contacted GOLO concerned that she had purchased the wrong product because she had purchased Goli at Walmart and she wanted the "real thing" and indicated that she planned to order GOLO and stop taking Goli.

194. While the above examples are instances where consumers have contacted GOLO and GOLO has been able to dispel the confusion, there is no doubt that many, many more are confused by Goli's use of a name so similar to GOLO and do not get the benefit of realizing their mistake.

195. Defendants' False and Misleading Claims also taint the reputation and marketability of its competitors' products, including GOLO's, because consumers are led to believe that Goli's Gummies provide the same benefits in a different (and easier) form and thus implying to consumers that other weight management supplements are either overpricing or overcomplicating their products. Indeed, just this month GOLO received a call from a customer indicating that he wanted to return the product he had purchased from GOLO because he had heard that Goli's ACV Gummies offer the same benefits, so he wanted to try those instead. Thus, Defendants' False and Misleading Claims are causing immediate and irreparable injury to GOLO, including injury to GOLO's business, reputation, and goodwill.

196. GOLO has lost revenue, and will continue to lose revenue, as consumers purchase Goli's products instead of GOLO's products due to Defendants' False and Misleading Claims and the financial, media, and reputational benefits derived from such claims.

197. Had Defendants not made the False and Misleading Claims and consumers had instead known the truth about the qualities of the Goli ACV and Ashwa Gummies, Defendants would not have been as successful. As such, Defendants have been unjustly enriched.

198. Without injunctive relief from this Court, GOLO will continue to suffer injury in the form of lost sales, loss of market share, loss of goodwill, and harm to its reputation all because of Defendants' False and Misleading Claims.

COUNT I – INFRINGEMENT OF REGISTERED TRADEMARK

(Against All Defendants)

199. GOLO repeats and realleges each of the numerical paragraphs both above and below as if fully set forth herein.

200. The foregoing acts of Defendants, undertaken without authorization from GOLO and with knowledge that GOLO and Goli are likely to be confused, are intended to cause and are likely to cause confusion, mistake, and deception among consumers, the public, and the trade as to whether the Defendants' current and future Goli-branded supplements originate from, or are affiliated with, sponsored by, or endorsed by GOLO.

201. Defendants have acted with knowledge of GOLO's superior trademark rights in GOLO and to unfairly benefit from the goodwill symbolized thereby.

202. Defendants' activities as described above constitute infringement of the GOLO Mark in violation of Section 32(1) of the Lanham Act of 1946, as amended (15 U.S.C. § 1114(1)).

203. On information and belief, Defendants' unlawful activities have enabled them to make, and to continue to make, substantial profits and gains to which they are not entitled.

204. On information and belief, Defendants will continue their willful infringing acts, unless restrained by this Court.

205. Defendants' acts have damaged, and will continue to damage, GOLO, and GOLO has no adequate remedy at law.

COUNT II – FALSE DESIGNATION OF ORIGIN

(Against All Defendants)

206. GOLO repeats and realleges each of the numerical paragraphs both above and below as if fully set forth herein.

207. Defendants' promotion, advertising, distribution, sale, and/or offering for sale of current and future dietary supplements using the Goli Marks is likely to confuse, mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or affiliation of the Defendants' supplements, and is intended, and is likely to cause, such third parties to believe in error that GOLO has authorized, sponsored, approved, endorsed, or licensed Defendants or that Defendants are in some way affiliated with GOLO.

208. Defendants' activities as described above constitute the use of false designations of origin in commerce, and false and misleading descriptions and representations of fact, all in violation of Section 43(a) of the Lanham Act of 1946, as amended (15 U.S.C. § 1125(a)).

209. On information and belief, Defendants have made and will continue to make substantial profits and gains to which they are not in law or equity entitled.

210. On information and belief, Defendants intend to continue their infringing acts, unless restrained by this Court.

211. Defendants' acts have damaged and will continue to damage GOLO, and GOLO has no adequate remedy at law.

COUNT III – CANCELLATION OF DEFENDANTS' INFRINGING REGISTRATION

(Against Goli)

212. GOLO repeats and realleges each of the numerical paragraphs both above and below as if fully set forth herein.

213. The continued existence of Defendants' U.S. Registration No. 6,047,784 for Goli is contrary to 15 U.S.C. § 1052(d) and will violate and diminish the prior and superior rights of GOLO in the GOLO Mark.

214. GOLO is and will continue to be damaged by the continued existence of the Infringing Registration in view of Plaintiff's prior and superior rights in the GOLO Mark and under common law, in violation of 15 U.S.C. § 1052(d).

215. The existence of the Infringing Registration has caused irreparable harm to GOLO, and, absent cancellation of the Infringing Registration, is likely to continue to cause irreparable harm to GOLO.

COUNT IV – FALSE ADVERTISING UNDER FEDERAL LAW

(Against All Defendants)

216. GOLO repeats and realleges each of the numerical paragraphs both above and below as if fully set forth herein.

217. The acts of Defendants as set forth above and below, including the advertising and dissemination of Defendants' False and Misleading Claims, constitute false advertising in violation of 15 U.S.C. § 1125(a)(1)(B). As a result of Defendants' actions, GOLO has suffered, and will continue to suffer, damages in an amount to be determined at trial. Further, Defendants have caused, and will continue to cause, immediate and irreparable injury to GOLO, including injury to GOLO's business, reputation and goodwill, for which there is no adequate remedy at law. GOLO is therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Defendants from engaging in future acts of false advertising and ordering removal of all of Defendants' false advertisements.

218. The acts of Defendants as set forth above and below constitute false and misleading representations of fact in commercial advertising or promotion, in interstate commerce in connection with goods or services, where Defendants' representations misrepresent the nature and/or qualities and/or benefits of Goli's ACV and Ashwa Gummies, and GOLO has been damaged and is likely to be damaged in the future by Defendants' acts.

219. The acts of Defendants as set forth above and below, particularly Defendants' False and Misleading Claims, caused commercial injury to GOLO, with such injury harming GOLO's ability to compete with Defendant Goli.

220. The acts of Defendants as set forth above and below, particularly Defendants' False and Misleading Claims in the commercial advertising and promotion of Goli's ACV and Ashwa Gummies, are the proximate cause of GOLO's injury. Defendants' False and Misleading Claims are material and likely to influence the purchasing decisions of actual and prospective purchasers of Goli and GOLO products. Defendants' False and Misleading Claims actually confuse and deceive, or have the tendency to, and are likely to confuse and deceive an appreciable number of relevant consumers. Defendants' False and Misleading Claims deceived consumers, which caused those consumers to withhold trade from GOLO.

221. Pursuant to 15 U.S.C. § 1117, GOLO is further entitled to recover from Defendants the damages sustained by GOLO because of Defendants' acts in violation of 15 U.S.C. 1125(a). As a result of the acts complained herein, GOLO has suffered damages in excess of this Court's minimum jurisdiction, the precise amount of which will be proven at trial.

222. Pursuant to 15 U.S.C. § 1117, GOLO is further entitled to recover from Defendants the gains, profits, market value, and advantages that Defendants have obtained because of Defendants' acts in violation of 15 U.S.C. § 1125(a), the precise amount of which will be proven at trial.

223. Pursuant to 15 U.S.C. § 1117, GOLO is further entitled to recover the costs of this action. Moreover, Defendants' conduct was undertaken willfully and with the intent to causes confusion, mistake, or deception, making this an exceptional case entitling GOLO to recover

additional damages, up to three times the amount of actual damages, and reasonable attorneys' fees.

224. Defendants' False and Misleading Claims will continue to divert sales to Goli at the expense of GOLO, and have lessened, are lessening, and will continue to lessen the goodwill enjoyed by GOLO products if not enjoined. The legal remedies available to GOLO are alone inadequate to remedy and compensate GOLO for the injuries it has sustained, and if not enjoined will continue to sustain, due to Defendants' unlawful conduct.

COUNT V – UNFAIR COMPETITION UNDER DELAWARE LAW

(Against All Defendants)

225. GOLO repeats and realleges each of the numerical paragraphs both above and below as if fully set forth herein.

226. Defendants' activities as described above constitute unfair competition and deceptive trade practices under the Delaware Uniform Deceptive Trade Practices Act, 6 *Del. C.* § 2531 *et seq.*

227. On information and belief, Defendants have made and will continue to make substantial profits and gains to which they are not, in law or equity, entitled.

228. On information and belief, Defendants intend to continue their infringing acts unless restrained by this Court.

229. Defendants' acts have damaged and will continue to damage GOLO, and GOLO has no adequate remedy at law.

COUNT VI – UNFAIR COMPETITION UNDER DELAWARE LAW (FALSE ADVERTISING)

(Against All Defendants)

230. GOLO repeats and realleges each of the numerical paragraphs both above and below as if fully set forth herein.

231. Defendants' false advertising activities as described above constitute unfair competition and deceptive trade practices under the Delaware Uniform Deceptive Trade Practices Act, 6 *Del. C.* §§ 2532(a)(8) and (12).

232. On information and belief, Defendants have made and will continue to make substantial profits and gains to which they are not in law or equity entitled.

233. On information and belief, Defendants intend to continue their infringing acts, unless restrained by this Court.

234. Defendants' acts have damaged and will continue to damage GOLO, and GOLO has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, GOLO prays for the following relief:

235. That Defendants, their agents, servants, affiliates, representatives, successors, and assigns, and all those persons or entities in active concert or participation with any of them who receive actual notice of the injunctive order, be enjoined preliminarily and permanently, pursuant to, without limitation, 15 U.S.C. 1116(a) and 6 *Del. C.* § 2533(a), from:

(a) Using Goli in commerce to sell, offer to sell, distribute, promote, advertise, market, or export from the United States dietary or nutritional supplements, including on (for example) websites, packages, wrappers, products, displays, labels, signs, circulars, kits, packaging, letterheads, business cards, literature, materials, and

receptacles. Any prohibited use of Goli includes use of Goli in any form or presentation, meaning, without limitation, orally, in upper case and/or lower case, in any particular font or stylized treatment (*e.g.*, italics), with or without a logo, and in any particular color or combination of colors;

(b) Using Goli as part of a trade or commercial name; meaning any name used to identify its business (15 U.S.C. § 1127);

(c) Using Goli as part of a website domain name, including (for example) www.goli.com, where Defendant sells, offers to sell, distributes, promotes, advertises, or markets dietary or nutritional supplements;

(d) Using Goli as a handle, username, or name on social media accounts, including (for example) Facebook, Twitter, Pinterest, LinkedIn, and Instagram;

(e) Using the GOLO Mark or any other mark, symbol, or device that is similar to the GOLO Mark, including the Goli Marks;

(f) Making (i) the 2=1 Claim, (ii) the 500 mg Claim, (iii) the Mother Claim, (iv) the Ashwa Concentration Claim, (v) the Calorie Claim, (vi) the Clinically-Proven Claim, and (vii) the Organic Claim in any medium, to promote or advertise Goli ACV and Ashwa Gummies; and

(g) Committing any other act calculated or likely to cause the public to believe that Defendants are in any manner connected, affiliated, or associated with GOLO or from otherwise competing unfairly with GOLO.

236. Pursuant to 15 U.S.C. § 1118, that Defendants deliver to GOLO for destruction all material (including, without limitation, all advertisements, promotional materials, and brochures)

within its possession, custody, or control, either directly or indirectly, that bears the Goli Marks or any other designation, symbol, or device that is confusingly similar to the GOLO Mark.

237. Pursuant to 15 U.S.C. § 1116(a), that Defendants be directed to file with the Court and serve upon GOLO, within thirty (30) days after entry of the injunctive order, a report in writing and under oath setting forth in detail the manner and form by which they have complied with the provisions set forth in paragraphs 235 and 236 above.

238. Pursuant to 15 U.S.C. § 1117(a), that the Court issue an award of: (i) Defendants' profits, increased by an amount the Court finds just under the circumstances proven at trial; (ii) GOLO's damages, increased up to three times the amount thereof; and (iii) the costs of the action.

239. Pursuant to 15 U.S.C. § 1117(a) and 6 *Del. C.* § 2533(b), that the Court determine that the case is exceptional and that GOLO recovers from Defendants its attorneys' fees and costs.

240. For an award of pre- and post-judgment interest on any and all monetary awards.

241. Pursuant to 15 U.S.C. § 1119, an Order that the United States Patent and Trademark Office cancel the Infringing Registration, Defendant's Registration No. 6,047,784.

242. That GOLO be awarded such other and further relief as the Court deems equitable, just, and proper.

DEMAND FOR JURY TRIAL

243. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38.1, GOLO hereby demands a trial by jury of all issues so triable.

Dated: December 20, 2021

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